TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 215.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, APPELLANT,

vs.

F. C. BABCOCK, AS TREASURER OF ADAMS COUNTY, NEBRASKA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED MARCH 5, 1906.

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Complainant's Exhibit No. 70—Statement of the footings of grand assessment roll of the State of Nebraska for the year 1904, certified by the secretary..... (omitted in printing)..	1161	—
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A. J. Bowle.....(" ").	1496	—
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Orlando C. Shannon.....(" ")..	1526	—
Gus B. Speice..... .....(" ")..	1530	—
William C. Kerr .....(" ")..	1533	—
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Complainant's Exhibit No. 86—"He calls them treasury assets" (omitted in printing)	1541	—
Testimony of Professor A. E. Davisson. (omitted in printing)..	1548	—
Complainant's Exhibit No. 87—Being page 322, volume 5, of United States Census Report (offered, not copied)..(omitted in printing)	1555	—
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Benjamin E. Powell.....(" ")..	1753	—
M. MacLean.....(" ")..	1755	—
Ben H. Goodell. .....(" ")..	1763	—
George W. Whittaker....(" ")..	1765	—
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C. C. Knapp.....(" ")..	1778	—
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No. 163—Affidavit of A. V. Offill, Buffalo county (omitted in printing).....	2006	—
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No. 165—Affidavit of W. H. Taylor, Butler county (omitted in printing)	2010	—
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No. 167—Affidavit of Wm. H. Pool, Cass county (omitted in printing).....	2012	—
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No. 171—Affidavit of Robert Emanuelson, Cheyenne county (omitted in printing).....	2016	—
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No. 173—Affidavit of S. C. Thompson, Clay county (omitted in printing).....	2018	—
No. 174—Affidavit of L. F. Fryar, Clay county (omitted in printing).....	2019	—
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Exhibit No. 178—Affidavit of Fred J. Houghton, Dawes county (omitted in printing)	2023	—
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No. 180—Affidavit of Harry C. McKibbin, Dawson county (omitted in printing)	2025	—
No. 181—Affidavit of James P. Carr, Dawson county (omitted in printing)	2027	—
No. 182—Affidavit of E. E. Halstead, Dixon county (omitted in printing)	2028	—
No. 183—Affidavit of Fred D. Wead, Douglas county (omitted in printing)	2029	—
No. 184—Affidavit of W. T. Graham, Douglas county (omitted in printing)	2030	—
No. 185—Affidavit of N. L. Smith, Fillmore county (omitted in printing)	2031	—
No. 186—Affidavit of H. T. Dullitz, Fillmore county (omitted in printing)	2032	—
No. 187—Affidavit of Albert R. Peck, Franklin county (omitted in printing)	2033	—
No. 188—Affidavit of Wm. A. Cole, Franklin county (omitted in printing)	2038	—
No. 189—Affidavit of M. T. Ward, Frontier county (omitted in printing)	2043	—
No. 190—Affidavit of C. M. Simmons, Frontier county (omitted in printing)	2044	—
No. 191—Affidavit of S. B. Yoeman, Gosper county (omitted in printing)	2045	—
No. 192—Affidavit of Walker Smith, Gosper county (omitted in printing)	2046	—
No. 193—Affidavit of Patrick H. Berry, Greeley county (omitted in printing)	2047	—
No. 194—Affidavit of Timothy Foley, Greeley county (omitted in printing)	2048	—
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No. 196—Affidavit of W. I. Farley, Lancaster county (omitted in printing)	2050	—
No. 197—Affidavit of John H. Christner, Hayes county (omitted in printing)	2051	—
No. 198—Affidavit of Edwin Loomis, Hayes county (omitted in printing)	2053	—
No. 199—Affidavit of F. S. Albright, Hooker county (omitted in printing)	2054	—
No. 200—Affidavit of G. M. Clevenger, Hooker county (omitted in printing)	2055	—
No. 201—Affidavit of John A. Easton, Johnson county (omitted in printing)	2056	—
No. 202—Affidavit of John G. O'Connell, Johnson county (omitted in printing)	2058	—
No. 203—Affidavit of Roscoe J. Slater, Kearney county (omitted in printing)	2060	—

	Original.	Print.
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No. 209—Affidavit of J. W. McDonald, Lancaster county (omitted in printing)	2066	—
No. 210—Affidavit of John Grant, Lincoln county (omitted in printing)	2067	—
No. 211—Affidavit of Butler Buchanan, Lincoln county (omitted in printing)	2068	—
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No. 215—Affidavit of Lyman Harris, Nance county (omitted in printing)	2072	—
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No. 217—Affidavit of Wm. B. Smith, Nemaha county (omitted in printing)	2074	—
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No. 219—Affidavit of Samuel A. Lapp, Nuckolls county (omitted in printing)	2076	—
No. 220—Affidavit of Jacob Ritterbush, Nuckolls county (omitted in printing)	2077	—
No. 221—Affidavit of Geo. W. Hawke, Otoe county (omitted in printing)	2078	—
No. 222—Affidavit of Richard H. Miller, Otoe county (omitted in printing)	2079	—
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No. 225—Affidavit of F. T. Walker, Platte county (omitted in printing)	2082	—
No. 226—Affidavit of H. S. Elliott, Platte county (omitted in printing)	2083	—
No. 227—Affidavit of Thomas Dack, Platte county (omitted in printing)	2084	—
No. 228—Affidavit of F. H. Hall, Polk county (omitted in printing)	2085	—
No. 229—Affidavit of John P. Heald, Polk county (omitted in printing)	2086	—

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Exhibit No. 230—Affidavit of C. H. Boyle, Red Willow county (omitted in printing)	2087	—
No. 231—Affidavit of Charles F. Babcock, Red Willow county (omitted in printing)	2088	—
No. 232—Affidavit of Edwin C. Towle, Richardson county (omitted in printing)	2089	—
No. 233—Affidavit of J. L. Slocum, Richardson county (omitted in printing)	2090	—
No. 234—Affidavit of W. T. Phillips, Rock county (omitted in printing)	2091	—
No. 235—Affidavit of Trenmor Cone, Saunders county (omitted in printing)	2092	—
No. 236—Affidavit of Oscar Hanson, of Saunders county (omitted in printing)	2095	—
No. 237—Affidavit of Trenmor Cone, Saunders county (omitted in printing)	2098	—
No. 238—Affidavit of William Q. Dickinson, Seward county (omitted in printing)	2100	—
No. 239—Affidavit of John Zimmerer, Seward county (omitted in printing)	2102	—
No. 240—Affidavit of C. Patterson, Sheridan county (omitted in printing)	2103	—
No. 241—Affidavit of De F. Van Vleck, Sheridan county (omitted in printing)	2105	—
No. 242—Affidavit of Conrad Parsons, Sioux county (omitted in printing)	2106	—
No. 243—Affidavit of W. H. Davis, Sioux county (omitted in printing)	2107	—
No. 244—Affidavit of F. A. Powell, Thayer county (omitted in printing)	2108	—
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No. 254—Affidavit of M. Sovereign, York county (omitted in printing)	2120	—
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1 Pleas Before the Honorable William H. Munger, Judge of the District Court of the United States for the District of Nebraska and sitting in the Circuit Court of the United States for the District of Nebraska, within the Eighth Judicial Circuit, at the November, 1905, Term thereof.

Be it remembered, That on the 30th day of November, 1904, bill of complaint was filed in said case, which said Bill of Complaint is in words and figures following, to-wit:

2 In the Circuit Court of the United States within and for the District of Nebraska.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County Nebraska; A. F. Carlson, as Treasurer of Blaine County, Nebraska; Charles W. Brennan, as Treasurer of Box Butte County, Nebraska; M. N. Troupe, as Treasurer of Buffalo County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. Wheeler, as Treasurer of Cass County, Nebraska; H. M. Flory, as Treasurer of Chase County, Nebraska; A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; M. J. Higgins, as Treasurer of Colfax County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; Robert O. Fink, as Treasurer of Douglas County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; E. J. Dempster, as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; E. P. Pyle, as Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage County, Nebraska; W. C. Johns, as Treasurer of Garfield County, Nebraska; W. L. Tilden, as Treasurer of Gosper County, Nebraska; C. T. Weeks, as Treasurer of Greeley County, Nebraska; F. E. Slusser, as Treasurer of Hall County, Nebraska; J. B. Cunningham, as Treasurer of Hamilton County, Nebraska; R. E. Counce, as Treasurer of Hayes County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William W. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt, as Treasurer of Kearney County, Nebraska; Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; F. K. Sprague, as Treasurer of Merrick County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelly, as Treasurer of Otoe

County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; D. A. Becher, as Treasurer of Platte County, Nebraska; Jud Holcomb, as Treasurer of Polk County, Nebraska; B. G. Gossard, as Treasurer of Red Willow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; Carl M. Lux, as Treasurer of Sioux County, Nebraska; J. A. Brown, as Treasurer of Harlan
3 County, Nebraska; W. H. Nickles, as Treasurer of Grant County, Nebraska; L. J. Malmsten, as Treasurer of Dawson County, Nebraska; A. R. Morrison, as Treasurer of Sarpy County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scott's Bluff County, Nebraska; L. F. Schultz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N. Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as Treasurer of Thomas County, Nebraska; W. L. McNutt, as Treasurer of Valley County, Nebraska; G. R. McCreary, as Treasurer of Webster County, Nebraska; Peter Dahlsten, as Treasurer of Wheeler County, Nebraska; R. Henderson, as Treasurer of York County, Nebraska, Defendants.

In Equity.

To the Honorable the Judges of the Circuit Court of the United States for the District of Nebraska, Sitting in Equity:

Chicago, Burlington & Quincy Railway Company brings this, its Bill of Complaint, against F. C. Babcock as Treasurer of Adams County, Nebraska; A. F. Carlson as Treasurer of Blaine County, Nebraska; Charles W. Brennan as Treasurer of Box Butte County, Nebraska; M. N. Troupe as Treasurer of Buffalo County, Nebraska; J. C. Perry as Treasurer of Butler County, Nebraska; William D. Wheeler as Treasurer of Cass County, Nebraska; H. M. Flory as Treasurer of Chase County, Nebraska; A. K. Greenlea as Treasurer of Cheyenne County, Nebraska; F. T. Swanson as Treasurer of Clay County, Nebraska; M. J. Higgings as Treasurer of Colfax County, Nebraska; W. A. George as Treasurer of Custer County, Nebraska; W. T. Wilson as Treasurer of Dawes County, Nebraska; L. J. Malmsten as Treasurer of Dawson County, Nebraska; Robert O. Fink as Treasurer of Douglas County, Nebraska; C. C. Barr as Treasurer of Dundy County, Nebraska; E. J. Dempster as Treasurer of Fillmore County, Nebraska; E. P. Pyle as Treasurer of Frontier County, Nebraska; B. F.
4 Moore as Treasurer of Furnas County, Nebraska; W. W. Wright as Treasurer of Gage County, Nebraska; W. C. Johns as Treasurer of Garfield County, Nebraska; W. L. Tilden as Treasurer of Gosper County, Nebraska; W. H. Nickles as Treasurer of Grant County, Nebraska; C. T. Weeks as Treasurer of Greeley County, Nebraska; F. E. Slusser as Treasurer of Hall County, Nebraska; J. B. Cunningham as Treasurer of Hamilton County, Nebraska; J. A.

Brown as Treasurer of Harlan County, Nebraska; R. E. Counce as Treasurer of Hayes County, Nebraska; J. P. Wertz as Treasurer of Hitchcock County, Nebraska; F. S. Albright as Treasurer of Hooker County, Nebraska; C. E. Taylor as Treasurer of Howard County, Nebraska; S. R. Merrell as Treasurer of Jefferson County, Nebraska; William W. Wheatley as Treasurer of Johnson County, Nebraska; Rollin Orcutt as Treasurer of Kearney County, Nebraska; Benjamin F. Knight as Treasurer of Lancaster County, Nebraska; E. S. Davis as Treasurer of Lincoln County, Nebraska; F. K. Sprague as Treasurer of Merrick County, Nebraska; D. J. A. Dirks as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelly as Treasurer of Otoe County, Nebraska; O. H. Loch as Treasurer of Pawnee County, Nebraska; E. H. Sexson as Treasurer of Perkins County, Nebraska; C. L. Granlund as Treasurer of Phelps County, Nebraska; D. A. Becher as Treasurer of Platte County, Nebraska; Jud Holcomb as Treasurer of Polk County, Nebraska; B. G. Gossard as Treasurer of Red Willow County, Nebraska; Martin Zook as Treasurer of Richardson County, Nebraska; C. E. Bowlby as Treasurer of Saline County, Nebraska; A. R. Morrison as Treasurer of Sarpy County, Nebraska; Oscar Hanson as Treasurer of Saunders County, Nebraska; Thomas Preston as Treasurer of Scott's Bluff County, Nebraska; L. F. Schultz as Treasurer of Seward County, Nebraska; Lee Fritz as Treasurer of Sheridan County, Nebraska; S. N. Sweetland as Treasurer of Sherman County, Nebraska; J. A. Bothwell as Treasurer of Thayer County, Nebraska; Chris Fritz as Treasurer of Thomas County, Nebraska; W. L. McNutt as Treasurer of Valley County, Nebraska; G. R. McCrary as Treasurer of Webster County, Nebraska; Peter Dahlsten as Treasurer of Wheeler County, Nebraska; Carl M. Lux as Treasurer of Sioux County, Nebraska; and R. Henderson as Treasurer of York County, Nebraska; who are respectively the duly elected, qualified and acting Treasurers of said Counties, and thereupon your orator complains and alleges:

I.

That your orator is, and at and during the times hereinafter stated was, a corporation created by and existing under the laws of the State of Iowa, and a citizen of the State of Iowa, having its principal office in the city of Burlington, Des Moines County, in said State.

II.

That the said F. C. Babcock, A. F. Carlson, Charles W. Brennan, M. N. Troupe, J. C. Perry, William D. Wheeler, H. M. Flory, A. K. Greenlee, F. T. Swanson, M. J. Higgins, W. A. George, W. T. Wilson, L. J. Malmsten, Robert O. Fink, C. C. Barr, E. J. Dempster, C. C. Brown, E. P. Pyle, B. F. Moore, W. W. Wright, W. C. Johns, W. L. Tilden, W. H. Nickles, C. T. Weeks, F. E. Slusser, J. B. Cunningham, J. A. Brown, R. E. Counce, J. P. Wertz, F. S. Albright, C. E. Taylor, S. R. Merrell, William W. Wheatley, Rollin Orcutt, Carl M. Lux, Benjamin F. Knight, Ed. S. Davis, F. K.

Sprague, D. J. A. Dirks, C. C. Dudley, R. W. Kelly, O. H. Loch, E. H. Sexson, C. L. Granlund, D. A. Becher, Jud Holcomb, B. G. Gossard, Martin Zook, C. E. Bowlby, A. R. Morrison, Oscar Hanson, Thomas Preston, L. F. Shultz, Lee Fritz, S. N. Sweetland, J. A. Bothwell, Chris Fritz, W. L. McNutt, G. R. McCrary, Peter
6 Dahlsten and R. Henderson are severally citizens of the State of Nebraska, and each of them is an inhabitant and resident of the District of Nebraska.

III.

That your orator pursuant to and in virtue of its charter, and the laws of the States hereinafter mentioned, is empowered to construct, or to purchase, lease, or otherwise acquire, and to maintain and operate, a railroad extending from the City of Chicago in the state of Illinois, to the City of Burlington, in the State of Iowa, and thence across the State of Iowa to Plattsmouth, in the State of Nebraska, and also to the cities of St. Louis, Kansas City, St. Joseph, Omaha, St. Paul, Denver, Cheyenne, Billings and other points in the states respectively of Illinois, Iowa, Missouri, Kansas, Nebraska, Colorado, Wyoming, South Dakota, Montana, and Wisconsin, with various branches and extensions in said states, and particularly to lease, purchase or otherwise acquire, the railroad and property, rights, privileges, immunities and franchises of Chicago, Burlington and Quincy Railroad Company, a corporation organized under the laws of the State of Illinois (hereinafter for brevity referred to as the "Illinois Company"); also to extend said lines of railroad, to build branches therefrom, and to aid other railroad corporations now or hereafter organized under the laws of any state or territory, or of the United States, in the construction or equipment of their roads or otherwise; and to exercise and enjoy all the powers, rights, privileges and franchises of railroad corporations organized under the laws of said mentioned states or of the United States; also to subscribe for, purchase, hold, own, use, sell, pledge or guarantee
7 the stocks, bonds and any other securities of any railroad corporation of the United States, or of any state or territory, and particularly of said Illinois Company or its constituent lines.

IV.

That your orator, pursuant to the provisions of its charter, and agreeably with the laws of the several states traversed by its lines, and on or about the 1st day of October, 1901, leased and took over from the Illinois Company, its railroad, properties, rights, privileges, immunities and franchises, whithersoever acquired or derived, or wheresoever existing, and particularly the railroad and branch lines of the Illinois Company, extending from the City of Chicago, Illinois, thence into and traversing the states respectively of Illinois, Missouri, Iowa, Kansas, Nebraska, Colorado, Minnesota, South Dakota, Montana, Wisconsin, and Wyoming, being the entire railroads and branches of said Illinois Company by it owned, operated or controlled, wherever existing, having a total main line mileage of 8,112.77 miles.

Of the said total mileage, 4,097.50 miles were and are within the territory lying west of the Missouri River, and 4,015.27 miles were and are in the territory lying east of said river; said mileage being apportioned among the states east and west of said river as follows: Illinois, 1,405.21 miles; Missouri, 1,022.59 miles; Iowa, 1,357.32 miles; Wisconsin, 222.57 miles; Minnesota, 23.61 miles; Montana, 187.28 miles; Wyoming, 351.23 miles; South Dakota, 257.56 miles; Colorado, 394.38 miles; Kansas, 259.62 miles; Nebraska, 2,611.10 miles.

That in addition to the said main line mileage so leased to and operated by your orator your orator also derived under said
8 lease from said Illinois Company certain valuable trackage, rights in, being the right to move its trains over, various lines of and belonging to other railroad companies in several of the states traversed by your orator's said lines, said right extending to the use of 211.06 miles of main line track, of which .53 miles is in Wisconsin; 9.40 miles are in Missouri; 68.16 miles are in Iowa; 14.84 miles are in Minnesota; .84 of a mile is in Kansas; 12.62 miles are in Montana; 20.28 miles are in Nebraska; 34.97 miles are in Colorado; and 49.42 miles are in Illinois; said leased mileage constituting in many cases the only means to your orator of connecting dissevered parts of its railroad in certain localities and of reaching and using important terminals in others. The sum, therefore, of the total main line mileage so leased, operated and used by your orator, is, and for more than two years last past has been, approximately, 8,323.83 miles.

V.

That your orator empowered by its charter and the laws of the States of Iowa and Nebraska so to do, in the year 1901, acquired under said lease, and ever since has held, maintained and operated, and still holds, maintains and operates, certain lines of railroad in the State of Nebraska, as follows, to-wit:

(1) A certain line extending from Rulo, Nebraska, in a westerly direction to Lincoln, in said State, a distance of about 108.04 miles, which line is part of a line commonly known as the Atchison and Nebraska Railroad.

(2) A certain line extending in a westerly direction from Plattsmouth, Nebraska, to Kearney, in said State, a distance of about 191.61 miles, which line is a part of line commonly known as the Burlington and Missouri River Railroad in Nebraska.

9 (3) A certain line extending in a southerly direction from Odell, Nebraska, to Lanham, in said State, a distance of about 5.28 miles, which line is commonly known as the Chicago, Nebraska and Kansas Railroad.

(4) A certain line extending in a northwesterly direction from Grand Island, Nebraska, to the west state line of the State of Nebraska, a distance of 352.44 miles, which line is commonly called and known as the Grand Island and Wyoming Central Railroad.

(5) A certain line extending in a southwesterly direction from Stromsburg, Nebraska, to Alma, in said State, and from McCool Junction, Nebraska, to Endicott, in said State, a total distance of

193.08 miles, which line is commonly known as the Kansas City and Omaha Railway.

(6) A certain line extending in a northerly direction from Central City, Nebraska, to Ericson, in said State, and a branch thereof extending in a northwesterly direction from Greeley Center, Nebraska, to Burwell, in said State, and another branch extending in a northwesterly direction from Palmer Nebraska, to Sargent, in said State, a total distance of 171.61 miles, which line is commonly known as the Lincoln and Black Hills Railroad.

(7) A certain line extending in a northwesterly direction from Lincoln, Nebraska, to Columbus, in said State, a distance of 73.49 miles, which line is commonly called the Lincoln and Northwestern Railroad.

(8) A certain line extending in a westerly direction form Nemaha, Nebraska. to York, in said State, a distance of 136.74 miles, which line is commonly called the Nebraska Railway.

10 (9) A certain line extending in a westerly direction from Dewitt, Nebraska, to the West State line of said State, also a branch line extending north and south between the towns of Custer and Fairmont, in said State; also a branch line extending in a southerly direction from Fairfield, Nebraska, to Superior, in said State; also a branch line from Kenesaw, Nebraska, to Oxford Junction, in said State; said lines having a total mileage of 430.71 miles, and commonly known as the Nebraska and Colorado Railroad.

(10) A certain line extending in a southerly direction from Alliance, Nebraska, to a point south of Sidney on the Colorado State line in said State, and a branch thereof extending in a westerly direction from Northport, Nebraska, to the west state line of said State, which line and branch are of the length of 140.79 miles, and is commonly known as the Nebraska, Wyoming and Western Railroad.

(11) A certain line extending in a southwesterly direction from Omaha, Nebraska, to Ashland, in said State, and a branch thereof extending in a northwesterly direction from said Ashland to Schuyler, in said State, being of the total length of 81.19 miles, and commonly known as the Omaha and North Platte Railroad.

(12) A certain line extending in a southerly direction from Omaha, Nebraska, to Oreapolis, in said State and a branch thereof extending in a northwesterly direction from said last mentioned point to Gilmore Junction, in said State, and also a branch thereof, extending in a southerly direction from Crete, Nebraska, to Beatrice, in said State, having a total mileage of 51.79 miles, and commonly known as the Omaha and Southwestern Railroad.

(13) A certain line extending in a southwesterly direction from Orleans, Nebraska, to the south state line of said State, a distance of 59.61 miles, commonly known as the Oxford and Kansas Railroad.

11 (14) A certain line extending in a westerly direction from Table Rock, Nebraska, to the West State line of said State, a branch thereof extending in a northerly direction from Salem Nebraska, to Nemaha, in said State, a branch thereof extending in a westerly direction from Nemaha, Nebraska, to Beatrice, in said state;

a branch thereof extending in a southerly direction from Beatrice, Nebraska, to Wymore, in said State; a branch thereof extending in a westerly direction from York, Nebraska, to Grand Island, in said state; a branch thereof extending in a northerly direction from Aurora, Nebraska, to Central City, in said State, and a branch thereof extending in a southerly direction from Hastings, Nebraska, to Lester, in said State, having a total mileage of 552.18 miles, and commonly known as the Republican Valley Railroad.

(15) A certain line extending in a southwesterly direction from Republican, Nebraska, to the south State line of said State, a distance of 8.50 miles, commonly known as the Republican Valley, Kansas and Southwestern Railroad.

(16) A certain line extending in a northwesterly direction from Culbertson, Nebraska, to Imperial, in said State, a distance of 49.17 miles, commonly known as the Republican Valley and Wyoming Railroad.

VI.

That on the 1st day of October, A. D. 1901, and for a long time prior thereto, the lines and every — of them mentioned and described in the preceding paragraph were owned, or controlled by said Illinois Company, either through purchase, or by ownership in, or control of, their respective securities. Each of said lines in Nebraska, except a few unimportant branches constructed in
12 recent years by said Illinois Company, or your orator, was originally constructed by the corporation designated herein in connection therewith, and which subsequently in one of the modes stated, conveyed its line, or its securities and stocks were transferred, to the Illinois Company, which, for a long period of time prior to October 1st, 1901, had continuously owned, or controlled, maintained and operated the same, the whole forming a part of that aggregation of railroads popularly known as the Burlington Route."

That shortly after the due incorporation and organization of your orator, and on, to-wit: October 1st, 1901, your orator acquires from said Illinois Company, by virtue of the agreements and provisions of a certain written indenture of that date, all and singular its railroads and branches, wherever existing, including therewith all rights, privileges and franchises, however, derived, including in said indenture the railroads and branches and every thereof, mentioned and described in a paragraph V hereof, with their respective rights, privileges and franchises, and your orator ever since said date has held, maintained and operated, and still holds, maintains and operates all and singular the said railroads, properties, rights, privileges and franchises.

Your orator further says that, in addition to the said mentioned railroads and appurtenances of said Illinois Company, which your orator took over under the said indenture of lease, your orator also acquired from said Illinois Company, certain other properties and assets, which while having no direct relation to the said lines of railroad as such, were employed and used in fostering and promoting traffic on and to your orator's said line, being means and instrumen-

talities employed to that end; said properties and assets being of the value of about twenty-nine (29) millions of dollars and consisting of the following: that is to say:

13 Grain elevators in Chicago, Illinois, of the value of	$481,816.56
Stocks, bonds, and investments, in the securities of other railroads, terminal and transfer companies of the value of	7,163,292.81
Bonds purchased by said Illinois Company for "Sinking Fund" and in the custody of the Trustees respectively of certain mortgages, and cash awaiting investment of the value of	14,249,024.09
Sundry available securities, being bonds of one of more of the constituent companies of said Illinois Company, held in its Treasury, of the value of	509,800.00
Cash on hand, or in depositories wholly outside of the State of Nebraska	360,000.00
Cash on hand, or in depositories wholly outside of the State of Nebraska, to the credit of "Fire Insurance Fund," to cover possible losses by fire, not otherwise covered by direct insurance	408,085.79
Cash on hand to the credit of "Replacement Fund" to replace equipment broken or destroyed	2,201,863.31
Elevators and appurtenances at East St. Louis	200,000.00
Elevators and appurtenances at Peoria, Illinois	25,000.00
Sheep yards at Montgomery, Illinois	280,000.00
Coal lands in Montgomery and McCoupon counties, Illinois	289,995.00
Burlington Park, Neighborville, Illinois	22,940.00
Lands in Madison County, Illinois	24,960.00
Gravel pit at Sugar Grove, Illinois	22,925.00
Coal lands in Monroe and Marion Counties, Iowa	470,000.00
Elevators at Council Bluffs, Iowa	41,000.00
Stock of St. Louis and Kansas City Land Company	1,192,000.00
14 Stocks and securities of Union Depots at Atchison, Kansas; Kansas City, Hannibal and St. Joseph, Missouri; and St. Paul, Minnesota	266,050.00
Lands and real estate, personal property, and rights in the City of St. Louis	400,000.00

All and every of which said mentioned properties, assets and choses in action were reflected in, and factors contributing value to the capital stock and outstanding bonds of said Illinois Company in due and exact proportion to the value thereof; and none of said properties, assets and choses in action were contained within, but were wholly without the State of Nebraska, and constituted no part of your orator's system of railroads.

Your orator further represents that, in and by said indenture of lease, and as part consideration thereof, your orator assumed the

burdens, debts, obligations and liabilities of the Illinois Company incident to said properties, and among other things, covenanted to and with said Illinois Company that it would, during the lease hold term and its possession of said properties thereunder, pay all and every the taxes that would be legally imposed or levied, and be a lawful and just charge against said property, and specifically all taxes that would be legally levied and be a just, lawful, and valid tax against the railroads and each thereof, mentioned and described in said paragraph "V".

VII.

Your orator further shows that the State Board of Equalization and Assessment of Nebraska is a Board created pursuant to the laws of said State, to assess all property of the railroads and railroad corporations in the State of Nebraska, except machine repair shops, general office buildings, store houses, and all real and personal property outside of right of way and depot grounds, which are by law required to be listed for purposes of taxation with the
15 deputy assessors of any precinct of the County where the same may be situated, in the manner provided by law for the listing and valuation of real and personal property. Said State Board of Equalization and Assessment is composed of the Governor, Auditor, Treasurer, Secretary of State, and Commissioner of Public Lands and Buildings of the State of Nebraska.

Said State Board is, by the law creating it, required to meet annually on the first Monday in May of each year for the purpose of ascertaining all property of any railroad company owning, operating or controlling, any railroad or railroad service in the State of Nebraska, which for the purpose of assessment and taxation are held to include the main track, side tracks, spur tracks, warehouse tracks, road-bed, right of way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with the moneys, credits, franchises and all other property of such road used or held for the purpose of operating its road, and, having so ascertained said property, to assess the same as personal property in the manner provided by law, and as hereinafter set forth.

VIII.

Your orator further shows that during the month of April, 1904, and prior to the 15th day thereof, it did, in full and strict compliance with the requirements of the law relating thereto, return to the State Board of Equalization, and Assessment of Nebraska, a sworn statement or schedule, in conformity to instructions and on forms
16 prescribed and prepared by said State Board, of the property of your orator within the State of Nebraska, as follows:

First: Of the right of way, track and road-bed, giving the entire length of the main track in the State of Nebraska and other states,

and showing as to the former, the exact protion in each county, township or city.

Second: The length of each side or second track and turnout, spur and warehouse track, and aggregate length of such side or second track, turnout, spur, and warehouse tracks, together with the name of the County Township, Precinct, City, Village and School and Road District, in which such side or second track and turnouts, spur and warehouse tracks were located;

Third: A complete list, giving size, location as to county, township and city and village, material and value of all depots, station houses, machine shops, stockyards, scales and other buildings situated wholly or in part on the right of way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith;

Fourth: The number of ties in track per mile, the weight of iron or steel rails per yard used in the main or side track, the joints or chairs used in track, kind of ballasting, length of time iron or steel has been used, and what length of time the road has been built;

Fifth: A full list of the rolling stock belonging to or operated by your orator, distinctly setting forth the number, class and value of all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, coal cars, flat cars, wrecking cars, pay cars, and all other cars owned or used by your orator within as well as without the State of Ne-
17 braska, together with a statement of the number of miles travelled by each of said classes of cars over the lines of your orator within the State of Nebraska, separately during the year preceding the first day of January, 1904;

Sixth: The amount of capital stock of your orator and said Illinois Company, and the number of shares into which same was divided; amount of such stock paid up, market or true value thereof; total amount of all indebtedness, secured as well as unsecured, except that relating to current expenses of operation; and the location and actual valuation of all of your orator's real estate and personal property in the State of Nebraska that was for assessment, and asssessed, locally, that is, wherever situated;

Seventh: A correct return of the value of all tools and materials used for repairs, and of all personal property of your orator within the State of Nebraska; together with such other information as said State Board required in order to enable it to apportion the rolling stock of your orator between the main line and branches of your orator.

Eighth: A true statement of all bridges of your orator, giving location as to County, Township, Village, City, School and Road Districts; true value thereof, kind and material, and the length, width and height of such structures;

Ninth: The total gross earnings and net earnings of your orator during the year preceding January 1st, 1904, and the total amount expended in the operation and maintenance of your orator's property, and the improvements thereof, distinguishing that expended in improvement or betterment from that expended in maintenance or

operation; the dividend last declared upon your orator's and said Illinois Company's stock, and the amount thereof, and the
18 date, number and the amount of all dividends declared upon said stock during the year next preceding, and all other information which said State Board required of your orator to enable the said Board to take into consideration in ascertaining and fixing the value of your orator's said railroads and their franchises.

IX.

Your orator further shows that on or before the 1st day of April, A. D. 1904, pursuant to the provisions of section 90 of the Law of Nebraska relating to public revenue, approved April 4th, 1903, it made and filed with each county clerk, of each county, in the State of Nebraska, through which the said roads of your orator extend, a report, in writing, duly verified, showing the number of miles of your orator's main track situated within each township, precinct, city, village and school and road district in each of said counties, including in such report, all machine and repair shops, general office buildings, store houses and all real and personal property of your orator in each of said counties not within or upon its rights of way.

The design and purpose of said reports to County Clerks were to furnish, through them, to the respective county, assessors, specific, information of and concerning the properties thereby reported, thereby the better to enable such county assessors to list and assess such properties, all of which are and were listable and assessable locally for the purpose of local taxation. Over that class of property the State Board of Equalization and Assessment had no jurisdiction or control, the assessment thereof being by the law of Nebraska, wholly confided to the local assessors of the counties where said property was situated. The value of the property thus reported
19 and for the year 1904 assessed, was in round numbers $731,900.00, of which amount $172,500.00 were for general office building, office furniture, and lots, lands and real estate in the City of Omaha; $126,475.00 were for shops, machinery, tools, lands and real estate in the City of Plattsmouth; $26,557.00 were for sheep yards and appurtenances in Lancaster County; $1,000.00 were for office furniture in Lincoln; $180,000.00 were for shops, tools, machinery, land and real estate in Havelock; $25,000.00 were for machinery and tools at McCook; $50,000.00 were for unironed railroad grade of the Crete, Milford and Western Railway Company, and $150,000.00 were for lands and real estate situated in other counties through which your orator's railroad extends.

X.

Your orator further shows that during the 1904 session of the State Board of Equalization and Assessment of Nebraska, your orator for the purpose of aiding and assisting said Board in its deliberations and to the end that it reach a fair and just assessment of the properties of your orator in Nebraska to be by said Board assessed, produced and gave in evidence, among other things, the Forty-ninth

Annual Report of the Board of Directors of your orator to its stockholders for the year ending June 30th, 1903; (which your orator is willing to produce upon the hearing of this cause;) a sworn statement of the gross and net earnings derived from the operation of your orator's lines in Nebraska for the year ending June 30th, 1903, including therein the operating expenses and taxes paid for and during the same period; a sworn statement of the gross and net earnings of your orator derived from its lines west of the
20 Missouri River for the year ending June 30th, 1903, including therein the operating expenses and taxes paid for and during the same period; a statement of the earnings derived from, and expenses incident to, the lines of your orator west of the Missouri River for the months respectively of March and April 1903, and a similar statement showing the earnings and expenses for the same months for 1904, which last named statements, subsequently proven by the oath of one of your orator's representatives, showed a material falling off in the gross and net revenues from your orator's traffic, from its lines west of the Missouri River, including Nebraska, with but slight reductions in expenses, for the months respectively of March and April, 1904, as compared with the same months in 1903; and a true and correct statement, showing situs and assessed valuation, of property of your orator in states other than Nebraska, all of which was assessable and asessed for local purposes at the places where respectively located.

The properties last referred to were those having neither actual nor constructive situs in Nebraska, but were wholly without the boundaries of said State. As their respective designations imply, they were not assessed with or as part of the railroads of your orator but as real estate, or personal property at the places where respectively situate, and comprising the following:

Real estate in Chicago and local points in Illinois	$250,000.00
Real estate in Dubuque and local points in Iowa	250,000.00
Bridges, or ports of bridges at Burlington, Iowa, over the Mississippi River; at Plattsmouth and Nebraska City over the Missouri River	503,000.00
Bridge at Minneapolis, Minnesota	350,000.00
Bridge at Winona, Wisconsin	201,000.00
Real estate and personal property at local points in Wisconsin	175,000.00
Lands, real estate and personal property in Denver, and other local points in Colorado	268,973.00
21 Lands and personal property in Yellowstone County and other local points in Montana	62,275.23
Bridge at Quincy, Illinois	3,200,000.00
Real estate and personal property in Deadwood and South Dakota	10,000.00
Real estate and personal property in Atchison and local points in Kansas	15,000.00
Real estate and personal property in Wyoming	10,455.00
Materials and supplies on hand	5,000,000.00

Said properties were and are of the fair, actual value of more than Ten Million Dollars, and were likewise represented in and gave value to the stocks and bonds of your orator. All and every of the said items of property were for and during the year 1904, assessed and taxed separately and apart from said railroads at the places where the same were respectively situated, agreeably with and in strict conformity to the laws of the respective states through which your orator's said railroads extend, except the State of Nebraska:

It results therefore, that the total value of your orator's said properties having their situs wholly in states other than Nebraska, and assessed and taxed outside of Nebraska, and having no connection with, or relationship to, your orator's said railroads in Nebraska, or in said other states, or if connected with or related to your orator's said railroad were not assessed therewith or as part thereof, but which, notwithstanding, are reflected in the market value of your orator's stocks and bonds, is, and at the time said State Board of Equalization and Assessment of Nebraska fixed and determined the assessment and valuation of your orator's said railroads in Nebraska for and during the year 1904, was more than thirty-nine ($39,000,000.00) millions of dollars, not including in this amount the properties of your orator within Nebraska assessable and
22 assessed, locally of the value as aforesaid, of $731,500.00.

Your orator shows that, by and through its representatives, it produced to and filed with the State Board of Equalization and Assessment of Nebraska, at its 1904 session, and before, as well as during its pretended consideration of the assessment of your orator's said railroads in Nebraska, schedules, sworn statements and oral testimony under oath, setting forth in detail all and every the facts, items, and averments herein and in the preceding paragraphs set forth, and, in addition, testimony touching the value, conditions, characteristics, volume of traffic, gross and net earnings, cost of operation, amounts respectively of fixed charges and taxes with reference to your orator's railroads in Nebraska as compared with the like matters and things concerning your orator's railroads in states other than Nebraska, into which said lines extend; and therein and thereby by means of said testimony and verified schedules and exhibits, which your orator avers were unchallenged, uncontra-cted, unimpeached and unimpeachable, showed to said State Board of Equalization and Assessment, the dissimilarity in condition, value and in all other essential, tangible and intangible respects of said lines in Nebraska compared with the lines of your orator east of the Missouri River, in the states respectively of Illinois, Iowa, Missouri, Wisconsin, and Minnesota; showed that the main line of your orator in Illinois consists of double and treble tracks; that the like condition obtains with reference to your orator's main track across the State of Iowa, which is double tracked across the state; that the length of the line so double tracked is approximately 500 miles; that your orator also owns vast and expensive yards and terminals in Cook County, Illinois, the value of which is enormous and runs into millions of dollars; that your orator also owns vast and expensive yards
23 and terminals in St. Louis and Kansas City, Missouri, and in the States of Iowa, Wisconsin, Minnesota; that your orator

save and except within the City of Omaha, has no expensive terminal within the State of Nebraska, and has less than five miles of double track in said State; that the lines of your orator in Illinois, Iowa, Missouri, Wisconsin, and Minnesota, because of the said vast and expensive terminals, double and treble tracks, are of infinitely greater value per mile than your orator's lines west of the Missouri River, including Nebraska; that the gross earnings derived from your orator's lines in Nebraska for the year ending June 30th, 1903, from interstate as well as intra state traffic (an exceptionally prosperous year) was less than one-fourth of the gross earnings from your orator's entire system, notwithstanding that more than one-third of your orator's entire mileage is within Nebraska; viz: 2,631.38 miles out of a total of 8,112.77, notwithstanding also that the division of the revenues from freight traffic originating within and destined to points beyond Nebraska east of the Missouri River, and from points east of the said river to points in Nebraska, has been arbitrarily adjusted in order to favor the lines of your orator in Nebraska to the extent of 1.4 miles for each mile carried; in other words, allowing the Nebraska lines in such division a constructive mileage of 1.4 for each actual mile; showed also that the lines of your orator in Nebraska, except its Chicago and St. Louis main lines to Denver, Colorado, and Billings, Montana, are nearly all branch lines or feeders which extend into and traverse sparsely settled localities, the business from and to which only demands inferior train service; that the line of railroad appurtenances, including the franchise thereof, hereinbefore identified by the name of Kansas City and Omaha Railroad, having a total mileage of 193.08, wholly within Nebraska, was, in May, 1900, sold and purchased in the open market at public
24 sale, free to all bidders, for $6,000.00 per mile, or gross, $1,158,480.00; that the line of railroad extending from Plattsmouth, Nebraska, to Kearney, in the said State, hereinbefore identified by the name of Burlington and Missouri River Railroad derived its right to construct, operate and maintain its railroad between said points from the Congress of the United States; that your orator's lines in Nebraska were not actually worth, by any mode of ascertainment, more than $25,000.00 per mile, and could be easily duplicated, or reproduced for that sum, including equipment and present terminals; that for many years preceding the year 1897, to-wit: from 1893 to 1896, both inclusive, your orator's lines in Nebraska earned less than two and one-half per cent on a valuation of $25,000.00 per mile, not deducting taxes for any year of said period; and in addition produced to and filed with said Board a mass of information and comprehensive data proper and essential to a fair consideration and just determination of the valuation of your orator's lines in Nebraska.

And your orator avers the fact to be that because of the evidence produced to and filed with said Board by your orator, it was logically impossible, wrongful and illegal for said State Board of Equalization and Assessment of Nebraska to make use of the unity of your orator's lines of railway wherever existing, to measure, as it did so measure, as hereinafter shown the value per mile of your orator's lines in Nebraska.

XI.

Your orator represents and charges the fact to be that the several constituent parts of its system of railways which as aforesaid extends into and crosses eleven (11) states, differ materially in
25 physical condition, in character, as well as cost of construction, in equipment, suppl-ed and used, and in quantum and quality of train service, as well as in the volume of traffic and earnings, and are radically unlike and unequal in value. The main line mileage in each of the states of Illinois, Iowa, Missouri, Wisconsin and Minnesota, is for many reasons more valuable mile for mile than the mileage in either of the states west of the Missouri River. The lines east of the river penetrate and traverse important populous and commercial centers like Chicago, St. Louis, Kansas City, St. Joseph, Minneapolis and St. Paul which have no counterpart in any of the states west of said river, reached by your orator's lines, including Nebraska. The population in the states east of said river served by or tributary to your orator's lines is much more dense per mile of railway than in either of the states west thereof; villages and towns are closer together and are larger in population, and the volume of business is necessarily greater per mile than in Nebraska.

The lines east of the river participate in the use of vast and expensive yards and terminals in Cook County, Illinois, and in the Cities of Chicago, St. Louis, Kansas City, St. Joseph, St. Paul and Minneapolis, the aggregate area of which is approximately sixteen hundred (1600) acres, and the present value about thirty million ($30,000,000) dollars. Of this vast area about six hundred and fifty (650) acres are in Cook County, Illinois; of which more than one-half is within the City of Chicago; over three hundred and (350) acres are in the City of St. Louis; two hundred and seventy-five (275) are in Kansas City; and the remainder, about three hundred and twenty (320) acres, are in St. Joseph, Missouri, St. Paul and Minneapolis, Minnesota.

26 The main line of your orator extending from Chicago westerly across the states of Iowa and Illinois, a distance approximately, of about five hundred (500) miles, is double tracked. Said line has been recently reconstructed and its grades reduced, curvature lessened, and its old rails replaced by new and heavier ones adequate to the traffic to be moved over them. The cost of constructing a second track, which includes in the case of a single track railroad, that of widening the way, approximately equals the cost of constructing the first track.

In Cook County, and in Chicago, Illinois, your orator possesses, in addition to first and second main line tracks, third and fourth main line tracks, of the aggregate length of sixty miles.

The conditions enumerated with respect to the lines east of said river are peculiar to, as they are confined to, these lines. There are less than six miles of main line second track in Nebraska. The yard and terminals therein, and which have existence in Lincoln and Omaha alone are compartively meagre both in extent and value, comprising only 125.80 acres, in Lincoln, and 115.94 acres in

Omaha. The lines of your orator in Nebraska, other than the main line from St. Louis, Missouri, to Oxford, Nebraska, where it forms a junction with the main line from Chicago and thence extends as one line to Denver, and the main line from St. Louis, Missouri, to Lincoln, Nebraska, where it unites with the main line from Chicago, and thence extends as one line to Billings, Montana, are a net work or branch lines, the largest part of which lie within the Republican and Beaver Valleys and were constructed and are used mainly to gather traffic from those sparsely populated areas, and to carry and deliver to main lines. Some of these branch lines do not pay the cost of operation even though that cost is reduced and minimized as the direct result of restricted and limited train service made up of mixed
27 trains and slow schedules.

XII.

Your orator further shows that the "second," "treble," "third", and "fourth" main line tracks across the state of Iowa and Illinois and in Cook County, and the City of Chicago, Illinois, are of the value of not less than two millions of dollars. That said additional tracks and said extensive yards and terminals in said states east of the Missouri River, which are the property of your orator covered by its stocks and bonds, are unnecessary for the accommodation of traffic to or from the lines west of said river, but are required solely because of the greater volume of business transacted by your orator's lines east of the said river, and because of its traffic connections with other lines north, south, east and west, with some of which it directly participates in transcontinental and oriental traffic.

The value of the terminals and yards and said additional tracks of your orator in said states east of the river as ascertained by the respective Assessment Boards of the various states in which they exist, or through which they extend, are taxed as part of your orator's lines within these states. Any attempt, therefore, to tax them in a state where they have no existence is an unlawful attempt to import property into the taxing jurisdiction for taxing purposes. In like manner, any attempt to ascertain or fix the value of your orator's railroad, which as aforesaid, exists in several states, and whose parts are admittedly unequal and dissimilar solely by the consideration of its stocks and bonds and dividing that value by the sum of the entire mileage wherever existing and assigning to Nebraska its mileage proportion thereof without first reducing the sum of the value
28 of the stocks and bonds by the value of your orator's property, tangible and intangible, mentioned and described in paragraphs "VI" and "X" hereof, no part of which exists within the State of Nebraska, or is taxable in that State, but all of which exists without and is taxable in the states where the same exists and is found, and without reducing said sum by the value of your orator's said terminals and additional track in said states east of the Missouri River, and by the sum of your orator's property in said states and in Nebraska assessable exclusively by local assessors for local purposes separate and apart from your orator's lines of railroad, constitutes an attempt to tax property in Nebraska which has

no territorial existence of situs in that state, and your orator avers the fact to be that the said State Board of Equalization and Assessment at its meeting in 1904, unlawfully, wrongfully and fraudulently and through a mistake of fact ascertained the value of the stocks and bonds issued by your orator and outstanding and divided the sum by the total number of miles of your orator's railroad wherever existing and assigned to Nebraska its portion thereof on a mileage basis without taking into consideration the value of said properties, as aforesaid covered by said stocks and bonds, as will be hereinafter more specifically shown.

XIII.

Your orator further alleges that Section 1, of Article IX, provides that "The Legislature shall provide such revenue as may be needful by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her *to* its property and franchises, the value to be ascertained in such manner as the Legislature may direct. * * *" Your orator submits that the stock and bond method of valuing your orator's property, a method
29 which is not employed by any assessor or assessing board in Nebraska to ascertain the value of the property of corporations other than railroads, produces a result largely contributed to by elements other than property, for example, supplies used and labor employed in the operation; fully sixty-five per cent of the result of the computation of value by said method representing supplies purchased and utilized, such as coal, oil, and other commodities, and by the labor of men engaged in operating your orator's property; and that not to exceed thirty-five per cent of said value resulting from the stock and bond method of valuation results from the application or use of the physical property of your orator.

Your orator further submits that the taxation of your orator's property upon a supposed property value, estimated by capitalization of its net earnings or by calculation of the market value of its stocks and bonds (both methods being identical in esence), amounts to an income tax, and is not a tax on property and franchises within the intent and meaning of the constitutional provision referred to.

Your orator also submits that the imposition of a tax on such supposed value ascertained by either of said methods, operates as a tax upon the good will of your orator's business, and upon the brains and managerial skill of its officials engaged in conducting the operation of your orator's properties. Taxation of your orator's property by either of said methods, and which were the methods used by said Board of Equalization and Assessment, to admeasure the value of the property of your orator, and of other railroad corpor-tions in Nebraska, for the purpose of taxation, operates to destroy the uniformity clause of the Constitution of the said State, and results in
30 injustice to, and imposes an undue burden upon your orator and its properties.

XIV.

Your orator further shows and represents that while its authorized capital stock is one hundred millions of dollars, only a small amount,

not exceeding $10,000, has been subscribed or issued; that the total amount of the stock of said Illinois Company and your orator on the 1st day of April, 1904, was of the par value of $110,839,100, and that said stock pertains to and represents the entire railroad and properties of your orator wherever situate, including the railroad and properties of your orator, within Nebraska, as aforesaid mentioned. That the total bonded debt of your orator and said Illinois Company on said last named date was $156,050,900 par value. That the sum of said two items on said date, computing the same at face value, was $266,890,000.

That save and except some limited issues of bonds carrying a high rate of interest and which sold for par, or occasionally in the past two years, at a small amount above par, the outstanding bonds of your orator and said Illinois Company have, at no time in the past three years, sold for more than par. The average market quotation the year around has been less than par. It results, therefore, and your orator charges and states the fact to be, that the actual market value of said bonds on the first day of April, 1904, did not exceed the sum of $156,050,900.

Your orator believes and so states the fact to be, that none of said Illinois Company's stock has found its way to, or been sold or purchased in, the markets of the country since August, 1901. Your orator is, therefore, not advised of the actual value of said stock on April 1st, 1904. In the year 1901, beginning with the month
31 of February and ending practically in May, the stock of your orator, was a subject of much speculation on the stock exchanges of New York, Boston and other places. During said time, because of well defined rumors that certain persons were seeking control of your orator's properties through and by means of its stock, the quotations rose rapidly from about 125 at the opening to 196 at the close of said period; but your orator is advised that the proportion of its stock so sold at the higher figure was small as compared with the former figure, so that much more of said stock sold for 125 per share than for 196. Nor was there any duplication of sales for as stock was purchased it was withdrawn from sale.

The conditions and circumstances which existed at and during the period said stock was so speculated in and rose in purchasable value, were unusual and extraordinary, in that an aggregation of individuals were known to be seeking the ownership and management of, or a control in, your orator's properties through a purchase of its stock. For this reason the price paid for your orator's stock had but slight relation to the value of its properties. Industrial value or actual worth were not recognized as factors in the strategic arrangement for control. What was desired was control. The cost was immaterial.

Aside from the conditions noted which gave a fictitious value to your orator's stock, there was inherent in its properties no element, or elements, that justified the current quotations of its shares. The last dividend prior to said time was the usual one; the earnings were practically the same as for the previous year; no immediate increase in the earnings or in the dividends was anticipated; the stock of other

roads equal in mileage and importance and traversing practically the same territory showed no particular fluctuations, yet the
32 stock of your orator rose from 125 per share in February to 196 per share in May, 1901.

Current quotations of shares of corporate stock on April 1st, 1904, and during the year preceding that date, had materially declined as compared with the previous three years, and stocks of the same class as that of your orator were quoted at about 110 per share. As before stated, none of your orator's stock has been on the market, or sold, since August, 1901, and, therefore, your orator has no knowledge or information, or means of information with respect to its market, or full value at said time; but avers that its full value did not exceed 110 per share, and that the full market value of said stock and bonds did not exceed the sum of $278,000,000 which reduced by the sum of the value of the properties outside of Nebraska, hereinbefore mentioned, and taxable in other states, and by the sum of the value of the yards and terminals and said other properties of your orator outside of said state and taxed, or used in giving value to the road elsewhere, to-wit: the aggregate sum of $68,204,213.00, gives the average value per mile of your orator's road in Nebraska, at about $26,112.00, which value, your orator avers, is in excess of its full value, and more than it would cost to reproduce it mile for mile in the same territory, under present conditions, including terminals, and equipment, the fact being that your orator's line in Nebraska, could be reproduced in all its parts for a sum within $25,000 per mile; and the major portion of its branch lines for a sum not exceeding $20,000 per mile.

XV.

Your orator further avers that the total assessment of property in Nebraska for the year 1903, as found and fixed by the different Assessing Boards, and as equalized by the State Board of Equalization was $188,458,379, apportioned as follows: Railroad
33 property, including property of Pullman Palace Car Company, but excluding property of railroad company assessable and assessed locally, $27,284,946; all other property, $161,173,433.

Railroad property for said year was assessed at approximately one-sixth of its full value; all other property, including real estate, at from one-seventh to one-twentieth of its full value. In that year, as in former years, millions of dollars worth of taxable property was never listed for taxation, and escaped taxation altogether. In 1904, as in 1903, millions of dollars worth of property have escaped and escapes assessment and taxation because of the lax enforcement of the provisions of the revenue law by those charged with the duty of enforcing them. An assessor in one County had a different standard by which to measure the taxable value of property than an assessor in another County. Uniformity in valuation, though a result intended and commanded by law, was never attained. Equalization as between the counties by the State Board of Equalization was a makeshift which resulted in preserving the inequalities created by assessors, instead of relieving and correcting them. The result is disparities of burdens between taxpayers and between other taxpayers and your orator.

In 1904, some feeble concerted attempt was inaugurated to obtain a fair and equitable assessment under the provisions of the revenue act approved April 4th, 1903, and which became effective in September of that year. The precinct assessors legislated out of official being were succeeded by an official known as the county assessor. The last named officials signalized their advent to office by the formulation of an artifice known as the tax list or tax return sheet which
34 soon found its way to the hands or homes of the taxpayers throughout the state. These writs of inquiry, so plethoric in detail and so incisive in their demands were constructed with special reference to a full and detailed statement of the taxpayer's personal possessions and belongings and that in his custody belonging to others, and in addition required of him that he verify the same by his oath, failing to do which latter, his property became amenable to an increase of fifty per cent ad valorem. This inquisitorial mode had a disquieting effect on those of the taxpayers owning bonds, notes, mortgages and money within environments of steel and which had theretofore, under former methods in vogue, successfully evaded and escaped taxation. The new method produced new factors for the assessment rolls, and unrest, distrust and indignation in the breasts of the owners. The legislative enactment in consequence was denounced as infamous and assailed at every turn. The small taxpayer and the farmer were importuned and solicited by the hitherto recalcitrants to unite with them in voicing protest against the execrable law, which, it was averred, was fashioned, formed, passed and approved by the railroads of Nebraska, or by their procurement. The measure and operations thereunder became a favorite theme for discussion by and exploitation among politicians. Political parties, believing the issue one fraught with possible success at the polls, adopted it as a tenet of political faith. Party press, ever amenable and responsive to party sentiment and party resolutions, roundly denounced the measure, and, vociferously asserting the palpable falsehood that the railroads of the State were tax shirkers, which did not bear or pay their just proportion of taxes, demanded
35 that the members of the State Board of Equalization and Assessment, a majority of whom sought re-election, increase the assessment of railroad properties, or suffer the ignominy of defeat at the polls; and threats were actually made to that end Editors, by tongue and pen, joined in the onslaught, and predicted all sorts of political disaster to the man or men who refused to be governed by their request. Thus clamor and machination, coercion and fear, and desire for political success overthrew reason and justice.

The Board of Equalization and Assessment of Nebraska, acting at its meeting commencing in May and terminating in June, 1904, for the purpose of ascertaining and fixing the taxable value of railroad property in the State of Nebraska, assessable by it under the law for the purposes of taxation, having been told, believing, or pretending to believe, claiming and alleging that there would be a uniform increase in the value of property for taxation for the year 1904, of at least eighty (80) per cent. as compared with the assessment of the same property for the previous year, or a total grand assessment of

$400,000,000, and, impelled and moved by the considerations hereinbefore referred to, unlawfully and wrongfully, arbitrarily and without reference to reason, method, or calculation and in advance of a hearing, determined to and did, increase the aggregate taxable value of railroad property in said state for the purposes of taxation for the year 1904, by adding to the assessment of the previous year about $19,000,000.00, thus fixing the assessment of railroad property in Nebraska, for the purposes of taxation for the year 1904,
36 at the sum of $46,177,563.00, or an increase of over seventy-three per cent. as compared with the assessment of 1903.

And your orator avers, that the said increase of about $19,000,000.00, was unlawfully, wrongfully, and arbitrarily fixed as the amount of increase to be added to the assessment of 1903, in arriving at the assessment of 1904; and said sum of $46,100,000.00 so arbitrarily attached to all railroad property in said state, assessable by said State Board, was distributed at the distributive portions thereof assigned to each railroad in said State as its share of the asessable value of railroad property as aforesaid, and became, and is, the pretended taxable value of each of said railroads in Nebraska, for the year 1904.

To the end that the aggregate value of all such railroad property in the State assessable as aforesaid by said Board should appear to have been produced or evolved from some scientific calculation, or predicated of some known and existing quantity, said Board and the members thereof, sitting as such, pretended to obtain the value of railroad property in Nebraska, including that of your orator, by totalizing the value of the stocks and bonds of the various railroads owning and operating railroads in said State; and found the aggregate value of the stocks and bonds issued by your orator or said Illinois Company to be of the value of about $314,378,750, and its total mileage 8,112.77 miles; that the above sum alleged as the aggregate value of the stock and bonds issued by your orator of said Illinois Company, covers with other factors and elements, the value of its entire physical property, assets, choses in action and all its franchises; that said amount was then divided by 8,112.77 repesenting your orator's entire mileage, other than that leased from
37 other roads and amounting to 211.06 miles, which process produced the sum of approximately $38,475,000 as the value per mile of your orator's railroad wherever situated, including that in Nebraska, and including property of every description, tangible and intangible, owned, enjoyed or possessed by your orator, including its franchises derived from other States and the United States. And, thereupon, said State Board and the members thereof, sitting as such, claiming to arrive at the supposed and pretended value of your orator's railroads in Nebraska, for taxation for 1904, divided said last named sum by five and thereby secured the sum of $7,750.00 per mile to represent one-fifth value of each mile of your orator's railroad wherever situated as represented by stocks and bonds issued by your orator, or said Illinois Company; and, thereupon, said State Board, desiring to appear to act conformably to the provisions of a resolution thertofore at said 1904 session by it

passed, and by its order spread at length on its Jouranl of Proceedings, proceeded to and did unlawfully, wrongfully and arbitrarily, but with a view to the preservation and application of the arbitrary figures previously secured by recourse to the mehtod referred to, fix the full value per mile of the physical or tangible property of your orator in Nebraska at the sum of $46,839,962.00, and separately, the full value per mile of the intangible property or franchises at the sum of $54,344,919.00, or a total of $101,184,881.00, which last named amount said Board, pursuant to law, divided by five, the quotient, or $20,235,186.00, being and representing the assessable value of your orator's said property in Nebraska for pur-
38 poses of taxation for the year 1904, or an average of $38,475.00 per mile for each mile of your orator's said railroad in Nebraska.

Notwithstanding its plain duty in the premises, the said State Board failed and neglected to ascertain the value of your orator's property and to value and assess the same upon the same basis as other property in the State of Nebraska was valued and assessed, but on the contrary, knowingly, wilfully, fraudulently and illegally, and without the exercise of judgment, made a pretended valuation and assessment of your orator's said property in said State of Nebraska, by which the assessed valuation of your orator's property in said State, the mileage being unchanged, was increased from the sum of $11,360,760.50, the assessment for the year 1903, to $20,336,970.00 for the year 1904, an increase in amount of $8,976,209.50, or seventy-three per cent., notwithstanding, as said Board well knew, that your orator's said property in said state was substantially of the same value as in the year 1903.

XVI.

That said arbitrary, reckless, and grossly unreasonable valuation and assessment, was made without the exercise of any judgment and as a result of mere will, and because of said public clamor and through fear and coercion produced by the operation of the influences and causes hereinbefore referred to, and by certain other extrinsic influences and in utter disregard of the duties enjoined on said Board by the Constitution and laws of Nebraska, and of your orator's rights in the premises.

And largely because of said influences and coercion said Board did not in fact find the value of your orator's property in Nebraska, but on the contrary, without proof, and in face and defiance of
39 and against the uncontradicted oral and written testimony produced before it, arbitrarily, fraudulently and illegally increased the assessed valuation of your orator's property in the State of Nebraska by the percentage aforesaid over the valuation of the previous year, and to an amount fifty per cent. in excess of one-fifth of the actual value thereof; that notwithstanding the duty of said Board to ascertain the value of each line of road in Nebraska, said Board knowingly, illegally and fraudulently and in utter disregard of the law and rights of your orator, pretended to fix a value upon all of the railroads in said State in one aggregate sum, that is to say,

instead of ascertaining the value of each road or line separately, main and branch, the Board, arbitrarily determined the amount at which all railroad property should be valued or increased in value over the previous year, fixing the same at the sum aforesaid; which sum it distributed over the mileage of the different roads in said State, and also fixed the amount of the aggregate valuation to be charged or assessed against each of the several railroads operating or owning lines in said State; and, after pretending to find the amount to be assessed or charged against each of said several corporations, it then proceeded to distribute or apportion such amount over the several roads, lines or branches of said corporations; that is to say, so much over the branches and so much over the main line; that it thus fixed the amount upon the main lines and branch lines of your orator's roads, as before stated, without regard to the real or actual value of the property embraced in either thereof, and without finding, or attempting to ascertain the real value thereof, but in accordance with no method or system, and without calculation of any kind; all which is strikingly exemplified in the exhibit hereto annexed,
40 marked "A," and made a part hereof, and in and by which it appears that the different parts of a main line are differently assessed, although each part is in exact relation and proportion to the other parts; that is to say, the lines of your orator designated by the name of Omaha and North Platte Railroad and Omaha and Southwestern Railroad are connected at the City of Omaha, an imaginary line only dividing them, the latter extending westerly and the former in southerly direction. The same traffic and equipment move over them and they are physically characteristically the same, except that part extending northerly from Ashland to Schuyler, which is a branch line; and yet there is a difference of $14,000.00 per mile in the taxable value of the physical property and of about $3,000.00 per mile in the taxable value of the intangible property of the one as compared with the other. Similar disparities might be multiplied indefinitely.

The line of your orator designated by the name of Kansas City and Omaha Railroad was sold and purchased in the middle of the year 1900, at public vendue, for $6,000.00 per mile. By the reckless and arbitrary finding of said Board it was assessed, in 1904, at about $25,000.00 per mile, notwithstanding that said Board knew that its operation barely produces operating expenses.

XVII.

Your orator further alleges that the said County Assessors and the County Boards of Equalization in the State of Nebraska have assessed the property in the State of Nebraska, and made and returned their abstracts and certificates thereof to the said State Board of Equalization and Assessment, and your orator charges the
41 fact to be that in truth and in fact real estate in the State of Nebraska has been valued and assessed at very much less than its actual value, and that the assessed value of real estate in this State is fixed at a sum aggregating not more than one-fifth of seventy per cent of the actual value, so that instead of real estate in this

State being assessed upon twenty per cent of its actual value, it is assessed upon not to exceed fourteen per cent of such actual value. It also charges and alleges the truth to be that not more than thirty per cent of the moneys and credits in the State of Nebraska have been valued and assessed, so that not more than one-fifth of thirty per cent of the actual value thereof have been valued and assessed, instead of twenty per cent thereof. It further alleges that live stock has been assessed upon the basis of one-fifth of not more than sixty per cent of its actual value, so that the assessed value of live stock is found to be about twelve per cent of the real value thereof instead of twenty per cent of such actual value. It also charges and alleges the truth to be that not more than forty per cent of the merchandise in the State of Nebraska has been assessed, so that not more than one-fifth of forty per cent of the actual value thereof, that is to say, eight per cent of its actual value, has been valued and assessed, instead of twenty per cent thereof. It also alleges and charges to be the fact that agricultural implements have been assessed on the basis of not more than one-fifth of thirty per cent of the actual value thereof, that is to say, at six per cent of the actual value, instead of twenty per cent thereof; that very large amounts of personal estate were wantonly overlooked so as to escape taxation entirely, and large amounts thereof wilfully, wantonly and unlawfully undervalued; that
42 the mass of the property assessed in said state has been assessed upon a basis which fixes and determines the assessed valuation at very much less than twenty per cent of the real or actual value of such property assessed; that an examination of the grand assessment roll for 1904 and a comparison thereof with that of the previous year discloses a falling off in the aggregate acreage of lands in Nebraska subject to assessment, of over 300,000 acres, and of city and town lots of 16,392. This, notwithstanding that at least 20,000 acres of entered lands in Nebraska were patented by the United States Government during the year ending April 1st, 1904. New property found its way to the assessment roll for the year 1904, which was not listed or assessed in the year 1903, of the full value of about $141,033,025.00 and of the taxable value of $28,807,000.00. The total assessed valuation for 1903 of all property other than railroads was $161,173,433.00. The like assessment for 1904 is $248,601,682.00, subtracting from this the assessed valuation of "new" property of the value of $28,807,000.00, leaves the assessed valuation for 1904 at $219,794,982.00, or an actual increase over 1903 of only about $58,000,000.00, or about thirty-five per cent, while the percentage of increase in railroad property, which is characteristically the same as in 1903, is over seventy-three per cent, and an increase in the property of your orator of seventy-eight per cent.

XVIII.

Your orator further alleges that including all of its tangible and intangible property, including franchises and every right over which the said State Board of Equalization and Assessment had
43 jurisdiction, the railroads and property of your orator in this State have no more or greater value than $63,204,313.00, of

which the assessed valuation, as fixed by law, is but one-fifth thereof, or $13,640,862.00; that of its said property, the Atchison and Nebraska Railroad of 108.04 miles has no more or greater value than the sum of $6,840.00 per mile; that your orator's line of railroad known as the Burlington and Missouri River Railroad of 191.61 miles, has no greater value than $12,600.00 per mile; that your orator's line of railroad known as the Chicago, Nebraska and Kansas Railroad of 5.28 miles, has no greater value than $4,320.00 per mile; that your orator's line of railroad known as the Grand Island and Wyoming Central Railroad of 352.44 miles, has no more or greater value than the sum of $4,440.00 per mile; that your orator's line of railroad known as the Kansas City and Omaha Railroad of 193.08 miles, has no greater value than $3,840.00 per mile; that your orator's line of railroad known as the Lincold and Black Hills Railroad of 176.61 miles, has no greater value than $3,840.00 per mile; that your orator's line of railroad known as the Lincoln and Northwestern Railroad of 73.49 miles, has no greater value than $4,200.00 per mile; that your orator's line of railroad known as the Nebraska Railway of 136.74 miles, has no greater value than $5,520.00 per mile; that your orator's line of railroad known as the Nebraska and Colorado Railroad of 430.71 miles, has no more or greater value than $3,900.00 per mile; that your orator's line of railroad known as the Nebraska, Wyoming and Western Railroad of 140.79 miles, has no more or greater value than $3,000.00 per mile; that your orator's line of railroad known as the Omaha and North Platte Railroad of 81.91 miles, has no more or greater value than $6,000.00 per
44 mile; that your orator's line of railroad known as the Omaha and Southwestern Railroad of 51.79 miles, has no more or greater value than $7,800.00 per mile; that your orator's line of railroad known as the Oxford and Kansas Railroad of 59.61 miles, has no more or greater value than $3,840.00 per mile; that your orator's line of railroad known as the Republican Valley and Wyoming Railroad of 49.17 miles, has no more or greater value than $3,600.00 per mile; that your orator's line of railroad known as the Republican Valley, Kansas and Southwestern Railroad of 8.50 miles, has no more or greater value than $3,700.00 per mile, and your orator's line of railroad known as the Republican Valley Railroad of 552.18 miles has no more or greater value than $5,400.00 per mile.

Your orator further charges and states the fact to be that said State Board, acting illegally, unlawfully, under coercion and through fear, in violation of its plain duty, and in fraudulent disregard of your orator's rights, wrongfully found and unlawfully determined that the full actual value of all of your orator's railroad properties in the state of Nebraska is the sum of $101,184,881.00, whereas, in truth and in fact the value of your orator's property in this state subject to the jurisdiction of said Board was of the value of $68,204,313.00.

XIX.

That in accordance with sections 129, 130, and 131 of said revenue law, the State Board of Equalization and Assessment assembled

on the 18th day of July, 1904, for the purpose of equalizing the assessments of all property assessed in the State of Nebraska. That during said hearing your orator appeared by its proper representative and directed the attention of said Board to the fact that wrongful, erroneous and illegal action had been taken by the County Boards of Equalization in several counties in the State with reference to the valuation and assessment of properties other than railroad property in said counties and charged the fact to be to said Board that large amounts of property within the State of Nebraska subject to taxation under the laws of the State had entirely escaped taxation, and had not been returned and also charged and showed to said Board that large amounts of property within the State had been valued at but a small proportion and percentage of its assessed valuation and that the same had not been valued at its actual value by the different assessors and assessing boards, and your orator demanded that said illegal, unlawful and erroneous action of said assessors and County Boards of Equalization should be corrected and adjusted as it affected injuriously the interests of your orator, and increased largely its burden of taxation, and demanded that these evils be corrected.

That your orator filed with said Board on July 25th, 1904, its certain protest and objection to the action of said assessors and County Boards and a petition for the correction thereof, and a copy of said objection and said petition will be produced upon the hearing hereof. But notwithstanding said objection and said petition, said State Board of Equalization and Assessment, although fully advised in the premises of such irregularities and illegal conduct of assessors and County Boards of Equalization, refused to correct the same or to equalize the assessments of property so as to make the same conform to the law, and failed, neglected, and refused to direct or control the several County assessors in the performance of their respective duties as they were required by law to do.

That notwithstanding the protest which your orator filed before said State Board of Equalization and Assessment, and its demand for relief from the excessive, unlawful and illegal valuations and assessment of its property said State Board ignored said protest and refused said petition and neglected, failed and refused to consider, act or pass upon the same or to grant to your orator any relief. And your orator alleges that by said action of said State Board, in refusing to consider your orator's request or grant it relief, your orator was denied the equal protection of the law, for that all other classes and species of property assessed under the revenue laws of the State of Nebraska were given the benefit, protection of comparison, consideration and equalization values, by said State Board of Equalization and Assessment, and entitled to the benefit and right of uniformity, but your orator and its property were denied such right of comparison or equalization as was given to all other classes of property and comparison thereof, and your orator was deprived of the equal protection of the laws and of due process of the law, rights granted to it not only by the Constitution of the State of Nebraska but by the Constitution of the United States.

XX.

That said pretended assessment by said Board of your orator's property was illegal, excessive, unlawful, fraudulent, null and void and without jurisdiction, for that said Board, in ascertaining the value of your orator's property, considered values and properties belonging to your orator outside of the State of Nebraska, and
47 outside of the jurisdiction of said Board. That the properties so considered by said Board in ascertaining said values and included in the valuation of your orator's railroads in Nebraska are those hereinbefore in paragraph- VI and X enumerated and also included the vast and expensive terminals and additional tracks herein referred to, appurtenant to your orator's lines in the States traversed by them east of the Missouri River, and which said properties were fully presented and explained to said Board and made a part of the sworn and uncontradicted testimony of your orator's representative, but was ignored; and your orator avers the fact to be that because said properties are assessable and have been assessed in jurisdictions other than Nebraska where of right and as matter of law they only exist, the assessment so made by said Board, if allowed to stand, will result in double taxation of your orator's property.

XXI.

That said pretended assessment by the State Board of Equalization of your orator's property was illegal, excessive, unlawful, fraudulent, null and void and without jurisdiction, for that by the provisions of the New Revenue Act, hereinbefore referred to, it was the duty of all the administrative Boards and assessors of the State of Nebraska to ascertain the actual value of all property of all classes, character, kind and description, subject to taxation in this State, and fix the assessable value thereof at twenty per cent. of the actual value. That said State Board fixed the valuation of your orator's property not only at its actual value, but largely in excess thereof; that all property in the State of Nebraska other than railroad, subject
48 to taxation, was not valued at its actual value but at about seventy per cent. thereof; that at the time of the consideration of the assessment by the said State Board of your orator's property it was earnestly urged upon the said Board and clearly shown to it that the other administrative Boards and assessors of the State had not and did not intend to fix the value of the property subject to taxation in the State other than railroad property at its actual value, but at from sixty-five to seventy-five per cent. therof. That your orator's property in this State is valued by said State Board greatly in excess of the relative value of other properties in this State. That said assessment is relatively out of proportion to the taxable value on all other property assessed. That one standard of value was used by the State Board in assessing railroad property, including that of your orator in this State, and another and entirely different standard of value was fixed by the administrative Boards and assessors in the State in ascertaining the value of all other kinds of property in the State.

XXII.

That said pretended assessment and valuation of your orator's property by said State Board was illegal, unlawful, excessive, fraudulent, null and void, and without jurisdiction, for that, entering into and forming a part of the value taken into consideration by said Board in fixing the valuation of your orator's property were franchises, privileges and rights belonging to your orator by purchase and otherwise, which were derived by virtue of grants from the Congress of the United States, and therefore were franchises, incorporeal hereditaments and properties not subject to taxation by said
49 Board or by the laws of the State of Nebraska, to-wit: franchises, incorporeal hereditaments and properties granted to the Burlington and Missouri River Railroad Company in Nebraska by the Congress of the United States.

XXIII.

That said pretended assessment and valuation of your orator's property by said State Board was illegal, unlawful, excessive, fraudulent null and void, and without jurisdiction, for that said Board included in its valuation your orator's property a certain sum for the earnings of your orator's property upon business which had neither origin nor destination within the State of Nebraska, and a supposed value in respect of other railroad business of your orator which was interstate in character, and refused to consider only the value of your orator's property and transportation business which had origin and destination within the State of Nebraska, and that the sums so included in said valuation of your orator's property was not subject to taxation under the laws of the State of Nebraska.

XXIV.

That said pretended assessment of your orator's property by the said State Board was illegal, unlawful, excessive, fraudulent, null and void, and without jurisdiction, and if carried into effect, will result in compelling your orator to bear an undue, unlawful and excessive proportion of the burden of government, and will result in largely increasing the taxes of your orator, the amount it will be required to pay as taxes to the said State of Nebraska, being
50 about $135,000.00 in excess of the taxes paid by it in the year 1903 and of about $175,000.00 in excess of the taxes paid by it in 1902.

XXV.

That the pretended assessment and valuation of your orator's property by said State Board not only was illegal, unlawful, excessive, fraudulent, null and void and without jurisdiction, but was also arbitrary, reckless and grossly unreasonable valuation and assessment of your orator's property in the State of Nebraska, and unless the same is restrained, your orator will be compelled to pay at least fifty per cent. more than its fair proportion of the tax and burden of the government.

XXVI.

That each and every of the several acts, doings and proceedings of the said State Board of Equalization and Assessment were null and void and fraudulent and a direct violation of the statutes of the State of Nebraska, and in contravention of the Constitution of the United States of America, as well as of the Constitution of the State of Nebraska, and if said acts, doings and proceedings are not restrained, cancelled, set aside and held for naught, and if the defendants are not restrained from carrying the same into effect, your orator will be deprived of its property without due process of law, and your orator will be deprived of the equal protection of the laws, all of which will be in violation of and repugnant to the Constitution of the United States of America, and of the Constitution of the State of Nebraska.

XXVII.

51 Your orator further alleges that each and every and all of the said acts, doings and proceedings as hereinbefore set out, by said State Board of Equalization and Assessment are wholly arbitrary, reckless, excessive, fraudulent, unlawful, illegal, unconstitutional, null and void and without jurisdiction or authority of law, and cast a cloud upon the title of your orator's property, and create a pretended lien thereon, and unless your orator can restrain the further action of said defendants, it will result in bringing about a multiplicity of suits, and your orator will suffer great and irreparable loss and injury, for and as against which it has no sufficient or adequate remedy at law.

XXVIII.

That it is provided by section 93 of the "New Revenue Act" as follows:

"SECTION 93. The State Board of Equalization and Assessment after having valued and assessed all the railroad property in this state in accordance with the provisions of this act, shall immediately make return to the county clerk of each and every county in which any portion of said railroad property as designated in this article, may be located, to be used as the basis of levy for the county, township, precinct, city, village, school and road districts therein, and through which any railroad or part thereof may extend."

That in pursuance of the said provision of said Act, the said State Board of Equalization and Assessment certified the said pretended valuation of your orator's property to the county clerks of each and every of the counties in the State of Nebraska into or through which your orator's said lines extend; said counties, mileage and the valuation so certified to each are particularly shown in the schedule hereto annexed marked Exhibit "B."

XXIX.

52 That section 96 of said New Revenue Act provides as follows:

"SECTION 96. Railroad property assessed by the State Board, shall

be apportioned by the county clerk among the respective precincts, townships, school districts, road districts, cities and villages in which the same may be entered on the tax list and collected by the county treasurer."

That thereupon it becomes and was the duty of the county clerks to enter on the tax lists to be collected by the treasurer, the apportionment of said tax.

That the said several county clerks of the said counties hereinbefore named did enter upon all of the tax books, tax records and tax warrants of the said several counties, the said valuation and the said assessed value of your orator's said property in each of the said several counties as so certified to them by the said State Board of Equalization and Assessment and extended upon the said several tax books and tax warrants, the respective levies required by law to be made and entered in said several counties as will be more fully hereafter set forth.

XXX.

Your orator further avers that the said State Board should not have found and determined the valuation per mile of your orator's said several lines of railroad in Nebraska to have been in any sum in excess of the amounts respectively hereinafter stated, nor should said Board have caused any greater assessment than said amounts hereinafter respectively stated, to wit: Atchison and Nebraska Railroad, \$6,840.00; Burlington and Missouri River Railroad in Ne-
53 braska, \$12,600.00; Chicago, Nebraska and Kansas Railroad, \$4,320.00; Grand Island and Wyoming Central Railroad, \$4,440.00; Kansas City and Omaha Railroad, \$3,840.00; Lincoln and Black Hills Railroad, \$3,840.00; Lincoln and Northwestern, \$4,200.00; Nebraska Railway, \$5,520.00; Nebraska and Colorado Railroad, \$3,900.00; Nebraska, Wyoming and Western Railroad, \$3,000.00; Omaha and North Platte Railroad, \$6,000.00; Omaha and Southwestern Railroad, \$7,800.00; Oxford and Kansas Railroad, \$3,840.00; Republican Valley and Wyoming Railroad, \$3,600.00; Republican Valley, Kansas and Southwestern, \$3,720.00; Republican Valley, \$5,400.00.

XXXI.

Your orator further alleges that all and every of the said acts, doings and proceedings of the said Board in respect of the valuation and assessment of your orator's said properties so as aforesaid situated in Nebraska and subject to the jurisdiction of said Board and all and every of said properties, were arbitrary, fraudulent, unreasonable, unlawful, and in violation of the rights secured to your orator by the Constitution of the State of Nebraska, and in violation of the rights secured to your orator by the Constitution of the United States; were without jurisdiction and authority of law, and were and are and each of them was and is wholly void, and also that all and every of the said acts, doings and proceedings of said Board in certifying the said pretended, unlawful and excessive assessment valuation and finding of assessed valuation to the said several Counties and County

Clerks, were and are, and each and all of them are, wrongful, unlawful and in violation of your orator's statutory and con-
54 stitutional rights, guaranteed to it by the Constitution and Laws of the United States, and that by reason of the said wrongful acts, doings and proceedings of said Board in reference to the assessment of your orator's property there has been cast upon the title to your orator's property a cloud and an unlawful lien and charge thereon; that thereby, and unless through the interposition of this Honorable Court your orator shall be relieved of the same, or said lien and cloud removed, your orator will be deprived of its properties without due process of law and denied the equal protection of the law, and particularly it will be denied the protection of the Constitution and laws of the State of Nebraska, and will be denied the equal protection of the Constitution and laws of the United States; and that in like manner, and for like reason, your orator alleges that the entry and extension upon the respective tax lists and tax warrants of the several counties of this state, so hereinbefore specified, of the said illegal, wrongful and pretended assessment, which your orator has hereinbefore and does now allege, was made without jurisdiction and without authority of law, and the enforcement of the collection of said taxes, so wrongfully, illegally and in fraud of your orator's said rights charged against it in and by said several tax warrants by the said several county treasurers, defendants herein, under and by virtue of and by force of said several tax warrants, will deprive your orator of its property without due process of law, will deny it the equal protection of the law, and will prevent it from enjoying the same measure of right which is guaranteed to other citizens and tax payers of the State of Nebraska in respect of the valuation or assessment of their property.

55 XXXII.

Your orator further alleges that the said several county boards of equalization, on the last day of their respective meetings as such, made their levies for county purposes in their respective counties, and that in like manner the several school districts road districts, towns, villages and cities in said several counties except the cities of South Omaha and Omaha respectively in Douglas County, have also made and certified to the county clerks of their respective counties the several levies required to be made on behalf of said several municipal subdivisions, and State Board of Equalization and Assessment at and during its said meeting, made and passed an order establishing the levy for state purposes required to be made and extended upon the assessment rolls and tax lists of each of the counties in this state, which said last named levies was in the aggregate six mills on the dollar of valuation, and caused the said last named levy to be certified out to the several clerks of the counties of this state, and that each and every of the said levies have been entered upon the assessment rolls and extended upon the tax lists and included in the tax warrants of the respective counties, which said tax warrants have lawfully come to the respective county treasurers of said counties

for collection, including in said number the several county treasurers named as defendants herein.

And your orator further alleges and shows that the amount of taxes for all purposes levied against your orator's property in the said several counties through which your orator's said lines of road extend, the treasurers of which are named as defendants
56 herein, is as set forth in the schedule hereto annexed marked Exhibit "C" and expressly made a part hereof.

And your orator avers that of the said amount of taxes so extended against your orator's properties and included in said tax records and warrants, to-wit; $661,520.31 and if your orator is compelled to pay the same, and the collection thereof is not restrained, the sum of $216,809.53 thereof is excessive, extortionate, illegal and unlawful, for all and every of the reasons hereinbefore stated, and for the further reason that the said State Board had, and all other assessing administrative boards have no jurisdiction over such excess.

XXXIII.

Your orator further shows that the county treasurer of each of the said counties in the State of Nebraska of which the county treasurers herein named as defendants are respectively the county treasurers, has received and now holds the tax warrant requiring him to collect from your orator taxes for the State of Nebraska and for each county and corporate subdivision within his jurisdiction for or on behalf of which taxes have been levied and charged against your orator's said properties.

XXXIV.

That each and every of the said County Treasurers, defendants herein, is charged by law with the duty of collecting taxes from your orator upon the said pretended and wrongful valuation and assessment of your orator's said properties, for all of the purposes and for the several state, county and other municipal subdivisions as hereinbefore alleged and stated, at the several rates and in
57 the several amounts hereinbefore alleged, and that each and every of them claim the right to make such collection upon the basis of the valuation and assessment so, as aforesaid, wrongfully and unlawfully made by said State Board of Equalization and Assessment, and that unless each and every of the said County Treasurers defendants herein, is made party defendant herein by reason of the unity of the claim under which they and each and all of them claim and assert their right and power to claim and demand taxes from your orator on account of its said properties and that unless the said several defendants who claim to act under the same right, are made parties defendant hereto, there will result the bringing of a great number and multiplicity of suits, and for all of said reasons your said orator will suffer great and irreparable loss, damage and injury, for and as against which, it has no sufficient or adequate remedy at law.

XXXV.

Notwithstanding your orator's said grievances hereinbefore alleged and set forth, it submits to this Honorable Court that in equity and fairness it should pay that just proportion of the taxes required to be paid by it under the terms and provisions of Section 1, Article 9 of the Constitution of the State, and it alleges that it is ready and willing to pay to each of the said several County Treasurers, defendants herein, any and all taxes levied and assessed against its said properties, at the rates and proportions that taxes are levied and assessed by the said respective state, county and other municipal subdivisions, as hereinbefore alleged, upon and in respect of the just valuation of its said properties in this State, that is to say, upon a
58 valuation not exceeding the sum of $6,840.00 per mile for its Atchison and Nebraska Railroad; $12,600 per mile for its Burlington and Missouri River Railroad in Nebraska; $4,320.00 per mile for its Chicago, Nebraska and Kansas Railroad; $4,440.00 per mile for its Grand Island and Wyoming Central Railroad; $3,840.00 per mile for its Kansas City and Omaha Railroad; $3,840.00 per mile for its Lincoln and Black Hills Railroad; $4,200.00 per mile for its Lincoln and Northwestern Railroad; $5,550.00 per mile for its Nebraska Railway; $3,900.00 per mile for its Nebraska and Colorado Railroad; $3,000.00 per mile for its Nebraska, Wyoming and Western Railroad; $6,000.00 per mile for its Omaha and North Platte Railroad; $7,800.00 per mile for its Omaha and Southwestern Railroad; $3,840.00 per mile for its Oxford and Kansas Railroad; $3,600.00 per mile for its Republican Valley and Wyoming Railroad; $3,720.00 per mile for its Kansas and Southwestern Railroad, and $5,400.00 per mile for its Republican Valley Railroad.

XXXVI.

Your orator further alleges that pursuant to the said several just and fair valuations per mile of its said railroad, it did during the month of November, A. D. 1904, and prior to the filing of this bill, tender and offer to the said several County Treasurers, defendants herein, the several sums of money set forth in the schedule hereto annexed marked "Exhibit B," and made a part hereof; all and every which said tenders were so made by your orator unconditionally, but for the full amount of the taxes which would be due, and due and payable to said several County Treasurers, de-
59 fendants herein, upon said just and fair valuation of your orator's said properties.

XXXVII.

And your orator avers that each and every of the said tenders and offers so made by your orator to the said several County Treasurers, was made in lawful money of the United States, and that of the said County Treasurers the following refused to receive the same, viz: F. C. Babcock, Treasurer, Adams County; C. W. Brennan, Treasurer, Box Butte County; M. N. Troupe, Treasurer, of Buffalo County;

J. C. Perry, Treasurer of Butler County; A. J. Greenlee, Treasurer of Cheyenne County; G. T. Swanson, Treasurer of Clay County; M. J. Higgins, Treasurer of Colfax County; L. J. Malmsten, Treasurer of Dawson County; C. C. Barr, Treasurer of Dundy County; C. C. Brown, Treasurer of Franklin County; E. P. Pyle, Treasurer of Frontier County; B. F. Moore, Treasurer of Furnas County; W. W. Wright, Treasurer of Gage County; W. C. Johns, Treasurer of Garfield County; W. L. Tilden, Treasurer of Gosper County; C. T. Weekes, Treasurer of Greeley County; F. E. Slusser, Treasurer of Hall County; J. B. Cunningham, Treasurer of Hamilton County; J. A. Brown, Treasurer of Harlan County; R. E. Counce, Treasurer of Hayes County; J. P. Wertz, Treasurer of Hitchcock County; S. R. Merrill, Treasurer of Johnson County; Rollin Orcutt, Treasurer of Kearney County; Benjamin F. Knight, Treasurer of Lancaster County; D. J. A. Dirks, Treasurer of Nemaha County; R. W. Kelly, Treasurer of Otoe County; O. H. Loch, Treasurer of Pawnee County; E. H. Sexson, Treasurer of Perkins County; C. L. Granlund, Treasurer of Phelps County; D. A.
60 Becher, Treasurer of Platte County; Jud. Holcomb, Treasurer of Polk County; B. G. Gossard, Treasurer of Red Willow County; Martin Zook, Treasurer of Richardson County; C. E. Bowlby, Treasurer of Saline County; A. R. Morrison, Treasurer of Sarpy County; Thomas Preston, Treasurer of Scotts Bluff County; L. F. Schultz, Treasurer of Seward County; Lee Fritz, Treasurer of Sheridan County; S. N. Sweetland, Treasurer of Sherman County; Carl M. Lux, Treasurer of Sioux County; J. A. Bothwell, Treasurer of Thayer County; W. L. McNutt, Treasurer of Valley County; G. R. McCrary, Treasurer of Webster County; Peter Dahlsten, Treasurer of Wheeler County and R. Henderson, Treasurer of York County. And your orator now offers to bring into court and to pay out of the said several sums of money to each of the said several County Treasurers, and to pay the same upon such terms and conditions as this Honorable Court may by its order herein direct, or to pay the said several sums of money into the registry of this Honorable Court, to be held for the use and benefit of the said several respective County Treasurers, for and on account of the taxes collectible or to be collected by them from your orator's said property and from your orator, in respect of the taxes levied and assessed against its said properties in each and every of the said several counties.

And your orator now offers to stand to and abide by the final order which may be entered in this cause in respect of the said taxes properly and lawfully levied and assessed against its said properties in said several and respective counties, and any and all such sums as the said several defendants as such County Treasurers may be found to be legally entitled to have and to receive of and
61 from your said orator, under and by virtue of the respective tax warrants held by them for collection, or for the enforcement of the collection of the taxes levied and collectible by them in the said several respective counties for the year 1904.

XXXVIII.

Your orator further alleges that under and by virtue of the laws of the State of Nebraska the taxes hereinbefore referred to became delinquent on and after December 1st, 1904, and that the several County Treasurers of each of the said counties in the State of Nebraska, who are made defendants herein, are now demanding of and from your orator the payment of the full amount of taxes charged and collectible from your orator on account of the said wrongful and unlawful valuation and assessment of your orator's said property, and now demand immediate payment thereof, and threaten that unless your orator submits to such demand and pay the said extortionate, unlawful, excessive and illegal levy of taxes upon said unlawful, excessive illegal and wrongful assessment, that they will proceed in accordance with the provisions of section 10560 of Colby's Compiled Statutes of the State of Nebraska for 1903, by notifying the agents and officers of your orator in the county where such tax is delinquent, that the same is delinquent, and of the amount due, and will proceed in accordance with said section 10560 to have all moneys held in the hands of agents and representatives of your orator, and that said moneys together with all other moneys that may come into their hands belonging to your orator until said tax is paid, and they will seize your said orator's property and its engines, cars and trains, and out of the same collect the full
62 amount set forth and claimed in said several tax warrants, to the great and irreparable delay, hindrance and injury of your said orator's business, and to its great and irreparable injury and damage, and thereby your orator's property would be forcibly and without its consent, taken from it without due process of law, and whereby your orator would be deprived of the equal protection of the law, and greatly and irreparably injured and damaged, and your orator also avers that it has no adequate remedy at law in the premises.

XXXIX.

That your orator avers that said section 10560, above referred to, is void and unconstitutional, for that it discriminates against a class of taxpayers of the State of Nebraska; that all other owners of property in the State of Nebraska, by paying the penalty provided for by law, have until the 1st day of February of each year after said taxes become delinquent, to pay the same, while corporations are compelled to pay their taxes on the 1st day of December, when the same become delinquent; that said section is discriminatory and violative of the Constitution of the United States of America; that if the defendants herein are permitted to carry out their threats and intentions to take your orator's property under said section or to proceed to enforce the provisions thereof, it will deprive your orator of its property without due process of law, will deny to it the equal protection of the law, all of which is contrary to and in violation of the Constitution of the State of Nebraska and of the Constitution of the United States of America.

In Tender Consideration Whereof, and for as much as your said

Orator is remediless in the premises at and by the strict rules
63 of the common law, and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable.

Your orator prays that said valuation and assessment by said State Board of Equalization and Assessment made and fixed for your orator's property for the year 1904 as herein set forth, be declared to be illegal, erroneous, unlawful, excessive, null and void, and that the assessed valuation of all of your orator's properties as in this bill described may be fixed in the aggregate sum of $13,640,862.00, and that the same may be distributed or apportioned among your orator's properties so hereinbefore described in the amounts as follows, to-wit: Atchison and Nebraska Railroad, $6,840.00 per mile; Burlington and Missouri River Railroad, $12,600.00 per mile; Chicago, Nebraska and Kansas Railroad, $4,320.00 per mile; Grand Island and Wyoming Central Railroad, $4,440.00 per mile; Kansas City and Omaha Railroad, $3,840.00 per mile; Lincoln and Black Hills Railroad, $3,840.00 per mile; Lincoln and Northwestern Railroad, $4,200.00 per mile, Nebraska Railway, $5,520.00 per mile; Nebraska and Colorado Railroad, $3,900.00 per mile; Nebraska, Wyoming and Western Railroad, $3,000.00 per mile; Omaha and North Platte Railroad, $6,000.00 per mile; Omaha and Southwestern Railroad, $7,800.00 per mile; Oxford and Kansas Railroad, $3,840.00 per mile; Republican Valley and Wyoming Railroad, $3,600.00 per mile; Republican Valley, Kansas and Southwestern Railroad, $3,720.00 per mile; Republican Valley Railroad, $5,400.00 per mile, and that no greater assessed valuation may be put upon your orator's property and premises as in this bill described than
64 the said sum of $13,640,862.00, and that to this end your orator may have in this cause such other and further relief as in equity and in good conscience it shall seem best.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States directed to the defendants herein, to-wit: F. C. Babcock, as Treasurer of Adams County, Nebraska; A. F. Carlson, as Treasurer of Blaine County, Nebraska; Charles W. Brennan, as Treasurer of Box Butte County, Nebraska; M. N. Troupe, as Treasurer of Buffalo County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. Wheeler as Treasurer of Cass County, Nebraska; H. M. Flory as Treasurer of Chase County, Nebraska; A. K. Greenlee as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; M. J. Higgins, as Treasurer of Colfax County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; R. O. Fink, as Treasurer of Douglas County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; E. J. Dempster as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; L. J. Malmsten, as Treasurer of Dawson County, Nebraska; W. H. Nickles, Treasurer of Grant County, Nebraska; J. A. Brown, Treasurer Harlan County, Nebraska; E. P. Pyle, as Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage

County, Nebraska; W. C. Johns, as Treasurer of Garfield County, Nebraska; W. L. Tilden, as Treasurer of Gosper County, Nebraska; C. T. Weekes as Treasurer of Greeley County, Nebraska; F. E. Slusser, as Treasurer of Hall County, Nebraska; J. B. Cun-
65 ningham, as Treasurer of Hamilton County, Nebraska; R. E. Counce, as Treasurer of Hayes County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William W. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt as Treasurer of Kearney County, Nebraska; B. F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; F. K. Sprague, as Treasurer of Merrick County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelly, as Treasurer of Otoe County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; D. A. Becher, as Treasurer of Platte County, Nebraska; Jud. Holcomb, as Treasurer of Polk County, Nebraska; B. G. Gossard, as Treasurer of Red Willow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; Carl M. Lux, as Treasurer of Sioux County, Nebraska; A. R. Morrison, as Treasurer of Sarpy County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N. Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as
66 Treasurer of Thomas County, Nebraska; W. L. McNutt as Treasurer of Valley County, Nebraska; G. R. McCrary, as Treasurer of Webster County, Nebraska; Peter Dahlsten, as Treasurer of Wheeler County, Nebraska and R. Henderson, as Treasurer of York County, Nebraska; and to each of them, and to such others as shall in the discretion of this Honorable Court appear necessary at the hearing and determination of this cause, commanding them and each of them, on a day certain, to appear before this Honorable Court and then and there answer this bill of complaint, (but not under oath, answer under oath being hereby expressly waived), and to abide by and perform such order and decree in the premises as to this Honorable Court shall seem proper, and as shall be agreeable to equity and good conscience.

And may it please your Honors to grant unto your orator a writ of injunction to be directed to the said defendants herein, to-wit: F. C. Babcock, Treasurer of Adams County, Nebraska; A. F. Carlson, Treasurer of Blaine County, Nebraska; Charles W. Brennan, Treasurer of Box Butte County, Nebraska; M. N. Troupe, Treasurer of Buffalo County, Nebraska; J. C. Perry, Treasurer of Butler County, Nebraska; William D. Wheeler, Treasurer of Cass County, Ne-

braska; H. M. Flory, Treasurer of Chase County, Nebraska; A. K. Greenlee, Treasurer of Cheyenne County, Nebraska; F. T. Swanson, Treasurer of Clay County, Nebraska; M. J. Higgins, Treasurer of Colfax County, Nebraska; W. A. George, Treasurer of Custer County, Nebraska; W. T. Wilson, Treasurer of Dawes, County, Nebraska; R. O. Fink, Treasurer of Douglas County, Nebraska; C. C. Barr, Treasurer of Dundy County, Nebraska; E. J. Dempster,
67 Treasurer of Fillmore County, Nebraska; C. C. Brown, Treasurer of Franklin County, Nebraska; E. P. Pyle, Treasurer of Frontier County, Nebraska; B. F. Moore, Treasurer of Furnas County, Nebraska; W. W. Wright, Treasurer of Gage County, Nebraska; W. C. Johns, Treasurer of Garfield County, Nebraska; W. L. Tilden, Treasurer of Gosper County, Nebraska; C. T. Weekes, Treasurer of Greeley County, Nebraska; F. E. Slusser, Treasurer of Hall County, Nebraska; J. B. Cunningham, Treasurer of Hamilton County, Nebraska; L. J. Malmsten, Treasurer of Dawson County, Nebraska; W. H. Nickles, Treasurer of Grant County, Nebraska; J. A. Brown, Treasurer of Harlan County, Nebraska; R. E. Counce, Treasurer of Hayes County, Nebraska; J. P. Wertz, Treasurer of Hitchcock County, Nebraska; F. S. Albright, Treasurer of Hooker County, Nebraska; C. E. Taylor, Treasurer of Howard County, Nebraska; S. R. Merrell, Treasurer of Jefferson County, Nebraska; William W. Wheatley, Treasurer of Johnson County, Nebraska; Rollin Orcutt, Treasurer of Kearney County, Nebraska; B. F. Knight, Treasurer of Lancaster County, Nebraska; F. K. Sprague, Treasurer of Merrick County, Nebraska; D. J. A. Dirks, Treasurer of Nemaha County, Nebraska; C. C. Dudley, Treasurer of Nuckolls County, Nebraska; R. W. Kelly, Treasurer of Otoe County, Nebraska; O. H. Loch, Treasurer of Pawnee County, Nebraska; C. L. Granlund, Treasurer of Phelps County, Nebraska; E. H. Sexson, Treasurer of Perkins County, Nebraska; D. A. Becher, Treasurer of Platte County, Nebraska; Jud. Holcomb, Treasurer of Polk County, Nebraska; B. G. Gossard, Treasurer of Red Willow County, Nebraska; Martin Zook, Treasurer of Richardson County, Nebraska; C. E. Bowlby, Treasurer of Saline County, Nebraska; Carl
68 M. Lux, Treasurer of Sioux County, Nebraska; A. R. Morrison, Treasurer of Sarpy County, Nebraska; Oscar Hanson, Treasurer of Saunders County, Nebraska; Thomas Preston, Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz, Treasurer of Seward County, Nebraska; Lee Fritz, Treasurer of Sheridan County, Nebraska; S. N. Sweetland, Treasurer of Sherman County, Nebraska; J. A. Bothwell, Treasurer of Thayer County, Nebraska; Chris Fritz, Treasurer of Thomas County, Nebraska; W. L. McNutt, Treasurer of Valley County, Nebraska; G. R. McCrary, Treasurer of Webster County, Nebraska; Peter Dahlsten, Treasurer of Wheeler County, Nebraska; and R. Henderson, Treasurer of York County, Nebraska; enjoining and restraining all and every of them, their respective agents, servants, clerks, and employés, from collecting or receiving from your orator herein any greater or larger sum of money under and by virtue of the said respective tax warrants held by them and in possession of each of them, than your orator has

heretofore tendered and offered to them respectively, that is to say:

That said F. C. Babcock, Treasurer of Adams County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad, Nebraska and Colorado Railroad, Kansas City and Omaha Railroad and Burlington and Missouri River Railroad in Nebraska, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $17,833.55.

That said A. F. Carlson, Treasurer of Blaine County, Nebraska, may be enjoined and restrained from collecting or receiving
69 from your orator herein or from either of your orator's lines of road hereinbefore described, known as the Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $3,108.26.

That said Charles W. Brennan, Treasurer of Box Butte, County Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Grand Island and Wyoming Central Railroad, and Nebraska, Wyoming and Western Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,984.17.

That the said M. N. Troupe Treasurer of Buffalo County Nebraska, may be enjoined and restrained from collecting or receiveng from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Burlington and Missouri River Railroad in Nebraska and Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $4,442.27.

That said J. C. Perry, Treasurer of Butler County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Lincoln and Northwestern Railroad and the Omaha and North Platte Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,092.37.

70 That said William D. Wheeler, Treasurer of Cass County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Burlington and Missouri River Railroad in Nebraska and the Omaha and Southwestern Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $15,571.53.

That said H. M. Flory, Treasurer of Chase County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road here-

inbefore described, known as the Republican Valley and Wyoming Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $2,502.94.

That said A. K. Greenlee, Treasurer of Cheyenne County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Nebraska, Wyoming and Western Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $8,948.94.

That said F. T. Swanson, Treasurer of Clay County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad, Nebraska and Colorado Railroad, Kansas City and Omaha Railroad and Burlington and Missouri River Railroad in
71 Nebraska, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $15,457.47.

That said M. J. Higgins, Treasurer of Colfax County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Omaha and North Platte Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $685.32.

That said W. A. George, Treasurer of Custer County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Grand Island and Wyoming Central Railroad, Lincoln and Black Hills Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $11,821.03.

That said W. T. Wilson, Treasurer of Dawes County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,821.74.

That said L. J. Malmsten, as Treasurer of Dawson County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $430.72.

72 That said R. O. Fink, Treasurer of Douglas County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Omaha, and Southwestern Railroad and Omaha and North Platte Railroad, any greater or larger sum in the aggregate under said tax

warrant, or under any other tax warrant, than the said sum of $2,621.79.

That said C. C. Barr, Treasurer of Dundy County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Republican Valley Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,654.04.

That said E. J. Dempster, Treasurer of Fillmore County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Burlington and Missouri River Railroad in Nebraska, Kansas City and Omaha Railroad, and Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $16,209.97.

That said C. C. Brown, Treasurer of Franklin County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Nebraska and Colorado Railroad and the Republican Valley Railroad, any
73 greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $7,699.66.

That said E. P. Pyle, Treasurer of Frontier County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $4,675.37.

That said B. F. Moore, Treasurer of Furnas County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and Oxford and Kansas Railroad, any larger or greater sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $10,784.77.

That said W. W. Wright, Treasurer of Gage County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad, Chicago, Nebraska and Kansas Railroad, Omaha and Southwestern Railroad, and Atchison and Nebraska Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $16,157.27.

That said W. C. Johns, Treasurer of Garfield County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Lincoln and Black Hills Railroad,
74 any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $811.73.

That said W. L. Tilden, Treasurer of Gosper County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $2,970.77.

That said W. H. Nickles, Treasurer of Grant County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $3,283.50.

That said C. T. Weekes, Treasurer of Greeley County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Lincoln and Black Hills Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,062.85.

That said F. E. Slusser, Treasurer of Hall County, Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and the Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $3,639.36.

75 That said J. B. Cunningham, Treasurer of Hamilton County, Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from your orator's lines of road hereinbefore described, known as the Republican Valley Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $8,234.02.

That said J. A. Brown, Treasurer of Harlan County Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Kansas and Southwestern Railroad, Republican Valley Railroad, Nebraska and Colorado Railroad, Oxford and Kansas Railroad, and Kansas City and Omaha Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $13,700.13.

That said R. E. Counce, Treasurer of Hayes County, Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Republican Valley and Wyoming Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $1,607.36.

That said J. P. Wertz, Treasurer of Hitchcock County, Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from either of your orator's lines of road here-

inbefore described, know- respectively as the Republican Valley and Wyoming Railroad and Republican Valley Railroad,
76 any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $7,988.20.

That said F. S. Albright, Treasurer of Hooker County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,142.74.

That said C. E. Taylor, Treasurer of Howard County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Lincoln and Black Hills Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,701.38.

That said S. R. Merrell, Treasurer of Jefferson County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and Kansas City and Omaha Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,755.17.

That said William W. Wheatley, as Treasurer of Johnson County, Nebraska, may be enjoined from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and Atchison and Nebraska Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $9,296.01.

77 That said Rollin Orcutt, as Treasurer of Kearney County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Burlington and Missouri River Railroad, Kansas City and Omaha Railroad, and Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $11,627.60.

That said Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Atchison and Nebraska Railroad, Nebraska Railway, Burlington and Missouri Railroad, and Lincoln and Northwestern Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $25,813.70.

That said E. S. Davis, as Treasurer of Lincoln County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore

described, known as the Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $7,225.84.

That said F. K. Sprague, as Treasurer of Merrick County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and Lincoln and Black Hills Railroad, any greater
78 or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $3,482.95.

That said D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and Nebraska Railway, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $7,916.16.

That said C. C. Dudley, as Treasurer of Nuckolls County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Nebraska and Colorado Railroad and Republican Valley Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $8,639.67.

That said R. W. Kelly, as Treasurer of Otoe County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Nebraska Railway, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $8,517.40.

That said O. H. Loch, as Treasurer of Pawnee County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Atchison and Nebraska Railroad and Republican Valley Railroad, any greater
79 or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,414.87.

That said E. H. Sexson, as Treasurer of Perkins County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,492.85.

That said C. L. Granlund, as Treasurer of Phelps County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Nebraska and Colorado Railroad and Kansas City and Omaha Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $4,476.34.

That said D. A. Becher, Treasurer of Platte County, Nebraska,

may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Lincoln and Northwestern Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $786.62.

That said Jud. Holcomb, Treasurer of Polk County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Kansas City and Omaha Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $386.23.

80 That said B. G. Gossard, Treasurer of Red Willow County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and the Oxford and Kansas Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $8,720.40.

That said Martin Zook, Treasurer of Richardson County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Atchison and Nebraska Railroad and the Republican Valley Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $11,400.31.

That said C. E. Bowlby, Treasurer of Saline County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Omaha and Southwestern Railroad, Burlington and Missouri River Railroad in Nebraska, Kansas City and Omaha Railroad, Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $16,087.49.

That said A. R. Morrison, Treasurer of Sarpy County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as Omaha and Southwestern Railroad and Omaha and North Platte Railroad, any greater

81 or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,908.75.

That said Oscar Hanson, Treasurer of Saunders County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as Omaha North Platte Railroad and Burlington and Missouri River Railroad in Nebraska, any greater or larger sum in the aggregate under said warrant, or under any other tax warrant, than the said sum of $8,605.33.

That said Thomas Preston, Treasurer of Scotts Bluff County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road

hereinbefore described, known as the Nebraska, Wyoming and Western Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,011.98.

That said L. F. Schultz, Treasurer of Seward County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as Lincoln and Northwestern Railroad and Nebraska Railway, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $6,866.76.

That said Lee Fritz, Treasurer of Sheridan County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Grand Island and Wyoming Central Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,447.00

82 That said S. N. Sweetland, Treasurer of Sherman County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Grand Island and Wyoming Central Railroad and the Lincoln and Black Hills Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $9,299.12.

That said Carl M. Lux, Treasurer of Sioux County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Grand Island and Wyoming Central Railroad, and Nebraska, Wyoming and Western Railroad, any greater or larger sum in the aggregate under said tax warrant or under any other tax warrant, than the said sum of $1,901.58.

That said J. A. Bothwell, Treasurer of Thayer County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Nebraska and Colorado Railroad and the Republican Valley Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $7,220.09.

That said Chris Fritz, Treasurer of Thomas County, Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Grand Island and Wyoming Central

83 Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $5,048.67.

That said W. L. McNutt, Treasurer of Valley County, Nebraska, may be enjoined and restrained from collecting or receiving from

your orator herein or from your orator's line of road hereinbefore described, known as the Lincoln and Black Hills Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $4,531.89.

That said G. R. McCrary as Treasurer of Webster County, Nebraska, may be enjoined and restrained from collecting and receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Republican Valley Railroad and Nebraska and Colorado Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $10,454.25.

That said Peter Dahlsten as Treasurer of Wheeler County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from your orator's line of road hereinbefore described, known as the Lincoln and Black Hills Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum of $554.80.

That said R. Henderson, as Treasurer of York County, Nebraska, may be enjoined and restrained from collecting or receiving from your orator herein or from either of your orator's lines of road hereinbefore described, known respectively as the Kansas City and Omaha Railroad, Nebraska Railway and Republican Valley Railroad, any greater or larger sum in the aggregate under said tax warrant, or under any other tax warrant, than the said sum
84 of $7,175,64,—until the final hearing and determination of this cause, and until the entry of a final decree herein, and that the said several County Treasurers, defendants, and each and every of them, may be enjoined and restrained from in any way or manner interfering with your orator in the peaceable, undisturbed and uninterrupted use and enjoyment of each and every part and parcel of its said property in this state, and from in any way or manner seeking to enforce, and from enforcing, the command of their several respective tax warrants, as against any of the properties of your said orator, until final order and decree of this Honorable Court in the premises, so that nothing in said order shall prevent or restrain the said several defendants, and each of them from accepting from your said orator the said several sums of money which have been by your orator tendered to the said defendants respectively, to be applied by them upon the respective tax warrants which they severally respectively hold, without prejudice to the right of your orator to prosecute this, its said Bill in respect to any excess of moneys so claimed by any one of the said several defendants who may so receive said sums of money, and without prejudice to the right of the said several defendants to insist in this cause upon their right to receive, under said several respective tax warrants, the full amount of money claimed and demanded thereunder, and that upon final hearing said injunction may be made perpetual.

And your orator further prays for such other general and
85 special relief in the premises as the nature of this cause may

require, and as may be consistent with equity and good conscience.

CHICAGO, BURLINGTON AND QUINCY
RAILWAY COMPANY,
By JAMES E. KELBY AND
CHARLES J. GREENE,
Solicitors for Complainant.

CHARLES F. MANDERSON,
Of Counsel for Complainant.

86 UNITED STATES OF AMERICA:

STATE OF NEBRASKA, *Douglas County of, ss:*

R. D. Pollard, having been first duly sworn on oath deposes and says, that he is the Tax Agent for Chicago, Burlington and Quincy Railway Company, and its agent in this behalf duly authorized and empowered; that said Chicago, Burlington and Quincy Railway Company is a corporation; that affiant has read the foregoing Bill of Complaint and knows the contents thereof to be true, except as to the matters and things therein stated upon information and belief, he believes them to be true.

R. D. POLLARD.

Subscribed in my presence this 30th day of November, 1904.

S. N. MELIO,
Notary Public.

[SEAL.]

Assessed Valuations Per Mile of C., B. & Q. Ry. Co. Property in Nebraska for the Year 1904.

Road.	Miles.	Tangible property per mile.	Tangible property.	Franchise per mile.	Franchise.	Total val. per mile.	Per cent. added for franchise.
Atchison & Nebraska	108.04	$21,126.00	$2,282,457.00	$28,874.00	$3,119,547.00	$50,000.00	136
Burlington & Missouri River R. R.	191.61	35,047.00	6,715,506.00	42,303.00	8,105,678.00	77,350.00	121
Chicago, Nebraska & Kansas	5.28	13,154.00	69,452.00	11,846.00	62,547.00	25,000.00	90
Grand Island & Wyoming Central	352.44	15,419.00	5,434,106.00	17,081.00	6,020,028.00	32,500 00	111
Kansas City & Omaha	193.08	12,921.00	2,494,729.00	12,079.00	2,332,213.00	25,000.00	93
Lincoln & Black Hills	176.61	12,743.00	2,250,473.00	14,757.00	2,606,234.00	27,500.00	116
Lincoln & North-Western	73.49	14,360 00	1,055,309.00	18,140.00	1,333,109.00	32,500.00	126
Nebraska Railway	136.74	25,020.00	3,421,326 00	14,980 00	2,048,365.00	40,000.00	59
Nebraska & Colorado	430.71	13,934.00	6,001,421.00	16,066.00	6,919,787.00	30,000.00	115
Nebraska, Wyoming & Western	140.79	13,160.00	1,852,800.00	9,340.00	1,314,979.00	22,500.00	71
Omaha & North Platte	81.19	27,489.00	2,231,871.00	15,011.00	1,218,743.00	42,500.00	54
Omaha & South-Western	51.79	41,177 00	2,132,529.00	3,998.00	207,056.00	45,175.00	09
Oxford & Kansas	59.61	13,209.00	787,401.00	6,791.00	404,812.00	20,000.00	51
Republican Valley & Wyoming	49.17	12,005.00	590,285.00	7,995.00	393,114.00	20,000.00	66
Rep. Val., Kan. & So. Western	8.50	13,011.00	110,593 00	6,989.00	59,406.00	20,000.00	54
Republican Valley	552.18	17,041.00	9,409,704.00	32,959.00	18,199,301.00	50,000.00	193
Total	2,611.23		$46,839,962.00		$54,344,919.00		
		Average per mile, $17,933.00			$20,812.00	Average,	116%

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F. C. BABCOCK, AS TREASURER, ETC. 49

88 EXHIBIT "B" TO BILL OF COMPLAINT.

County.	1904 taxes as extended on tax books.	1904 taxes as tendered or paid during month of November.	Amount to be enjoined.
Adams	$24,961.13	$17,833.55	$7,127.58
Blaine	4,789 59	3,108.26	1,681.33
Box Butte	10,414.95	6,984.17	3,430.78
Buffalo	5,946.58	4,442.27	1,504.31
Butler	7,679.94	5,092.37	2,587.57
Cass	19,143.54	15,571.53	3,572.01
Chase	2,811.04	2,502.94	308.10
Cheyenne	14,184.19	8,948.94	5,235.25
Clay	20,270.33	15,457.47	4,812.86
Colfax	970.87	685.32	285.55
Custer	17,030.67	11,821.03	5,209.64
Dawes	8,522.86	5,821.74	2,701.12
Dawson	662.64	430.72	231.92
Douglas	3,613.16	2,621.79	991.37
Dundy	12,627.90	6,654.04	5,973.86
Fillmore	21,594.09	16,209.97	5,384.12
Franklin	13,357.69	7,699.66	5,658.03
Frontier	7,192.92	4,675.37	2,517.55
Furnas	16,383.98	10,784.77	5,599.21
Gage	26,618.47	16,157.27	10,461.20
Garfield	1,162.63	811.73	350.90
Gosper	4,570.38	2,970.77	1,599.61
Grant	4,907.09	3,283.59	1,623.50
Greeley	8,683.65	6,062.85	2,620.80
Hall	5,602.54	3,639.36	1,963.18
Hamilton	15,248.21	8,234.02	7,014.19
Harlan	20,844.86	13,700.13	7,144.73
Hayes	1,785.96	1,607.36	178.60
Hitchcock	13,306.46	7,988.20	5,318.26
Hooker	7,528.77	5,142.74	2,386.03
Howard	8,166.05	5,701.38	2,464.67
Jefferson	9,968.55	5,755.17	4,213.38
Johnson	14,997.52	9,296.01	5,701.51
Kearney	15,746.44	11,627.60	4,118.84
Lancaster	32,725.74	25,813.70	6,912.04
Lincoln	11,149.08	7,225.84	3,923.24
Merrick	5,434.24	3,482.95	1,951.29
Nemaha	13,005.02	7,916.16	5,088.86
Nuckolls	14,720.44	8,639.67	6,080.77
Otoe	12,369.10	8,517.40	3,851.70
Pawnee	11,114.45	6,414.87	4,699.58
Perkins	9,982.61	6,492.85	3,489.76

Exhibit "B" to Bill of Complaint—Continued.

County.	1904 taxes as extended on tax books.	1904 taxes as tendered or paid during month of November.	Amount to be enjoined.
Phelps	$7,726.41	$4,476.34	$3,250.07
Platte	1,183.96	786.62	397.34
Polk	502.93	386.23	116.70
Red Willow	14,269.70	8,720.40	5,549.30
Richardson	17,582.70	11,400.31	6,182.39
Saline	20,499.09	16,087.49	4,411.60
Sarpy	8,623.08	6,908.75	1,714.33
89 Saunders	11,867.40	8,605.33	3,262.07
Scotts Bluff	7,541.46	5,011.98	2,529.48
Seward	10,276.60	6,866.76	3,409.84
Sheridan	8,354.38	5,447.00	2,907.38
Sherman	12,683.95	9,299.12	3,384.83
Sioux	2,783.99	1,901.58	882.41
Thayer	12,195.90	7,220.09	4,975.81
Thomas	7,391.10	5,048.67	2,342.43
Valley	6,490.96	4,531.89	1,959.07
Webster	18,424.90	10,454.25	7,970.65
Wheeler	794.64	554.80	239.84
York	10,530.83	7,175.64	3,355.19
Total	$661,520.31	$444,710.78	$216,809.53

County.	Road.	Mileage.	Tenders made on a valuation per mile of	Total valuation.	Amount of taxes on books.	Amount tendered or paid.	Amount to be enjoined.
Adams	Republican Valley	25.88	$5,400 00	$139,752.00	$7,844.80	$4,236.18	$3,608.62
"	Nebraska & Colorado	3.70	3,900.00	14,430.00	704.64	458.02	246.62
"	Kansas City & Omaha	24.98	3,840 00	95,923.20	4,031.35	3,055.84	975.51
"	Burlington & Missouri River	24.07	12,600.00	303,282.00	12,380.34	10,083.51	2,296.83
Blaine	Grand Island & Wyoming Central	18.40	4,440.00	81,696.00	4,789.59	3,108.26	1,681.33
Box Butte	Grand Island & Wyoming Central	42.05	4,440 00	186,702.00	9,254.09	6,210.26	3,043.83
"	Nebraska, Wyoming & Western	7.47	3,000.00	22,410.00	1,160.86	773.91	386.95
Buffalo	Burlington & Missouri River	6.45	12,600.00	81,270.00	2,894.28	2,357.33	536.95
"	Grand Island & Wyoming Central	15.69	4,440 00	69,663.60	3,052.30	2,084.94	967 36
Butler	Lincoln & Northwestern	27.12	4,200.00	113,904.00	5,449.27	3,517.78	1,931.49
"	Omaha & North Platte	9.82	6,000.00	58,920.00	2,230.67	1,574.59	656.08
Chase	Republican Valley & Wyoming	18.48	3,600.00	66,528 00	2,811.04	2,502.94	308.10
Cheyenne	Nebraska, Wyoming & Western	93.20	3,000.00	279,600.00	14,184.19	8,948.94	5,235.25
Cass	Burlington & Missouri River	36 04	12,600.00	454,104.00	18,921.46	15.379.78	3,541.68
"	Omaha & Southwestern	1.02	7,800 00	7,956.00	222 08	191.75	30.33
Clay	Republican Valley	2.27	5,400.00	12,258.00	898.55	485.22	413.33
"	Nebraska & Colorado	19.65	3,900.00	76,635.00	3,892.75	2,533.28	1,359.47
"	Kansas City & Omaha	31.45	3,840.00	120,768.00	4,559.90	3,487.19	1,072.71
"	Burlington & Missouri River	24.92	12,600.00	313,992.00	10,919.13	8,951.78	1,967.35
Colfax	Omaha & North Platte	2.76	6,000.00	16,560.00	970.87	685.32	285.55
Custer	Grand Island & Wyoming Central	59.28	4,440.00	263,203.20	14,078.50	9,759.94	4,318.56
"	Lincoln & Black Hills	13.17	3,840.00	50,572.80	2,952.17	2,061.09	891.08
Dawes	Grand Island & Wyoming Central	33.60	4,440.00	149,184.00	8,522.86	5,821.74	2,701.12
Dawson	Nebraska & Colorado	2 79	3,900.00	10,881.00	662.64	430.72	231.92
Dundy	Republican Valley	41.54	5,400.00	224,316.00	12,627.90	6,654.04	5,973.86
Fillmore	Burlington & Missouri River	24.05	12,600.00	303,030.00	10,559.67	8,579.72	1,979.95
"	Kansas City & Omaha	27.00	3,840.00	103,680.00	3,880.60	2,980.29	900.31
"	Nebraska & Colorado	44.31	3,900.00	172,809 00	7,153.82	4,649.96	2,503.86
Franklin	Nebraska & Colorado	21.78	3,900 00	84,942.00	4,422.99	2,874.95	1,548.04
"	Republican Valley	24.56	5,400.00	132,624.00	8,934.70	4,824.71	4,109.99

Frontier	Nebraska & Colorado	32.13	3,900.00	125,307.00	7,192.92	4,675.37	2,517.55
Furnas	Republican Valley	30.85	5,400.00	166,590.00	11,771.10	6,356.39	5,414.71
"	Oxford & Kansas	31.52	3,840.00	121,036.80	4,612.88	4,428.38	184.50
Gage	Republican Valley	58.27	5,400.00	314,658.00	19,547.75	10,514.32	9,033.43
"	Chicago, Nebraska & Kansas	5.28	4,320.00	22,810.00	720.40	622.44	97.96
"	Omaha & Southwestern	13.02	7,800.00	101,556.00	3,774.92	3,258.92	516.00
"	Atchison & Nebraska	9.14	6,840.00	62,518.00	2,575.40	1,761.59	813.81
Garfield	Lincoln & Black Hills	4.17	3,840.00	16,012.80	1,162.63	811.73	350.10
Gosper	Nebraska & Colorado	20.83	3,900.00	81,237.00	4,570.38	2,970.77	1,599.61
Grant	Grand Island & Wyoming Central	30.89	4,440.00	137,151.60	4,907.09	3,283.59	1,623.50
Greeley	Lincoln & Black Hills	42.66	3,840.00	163,814.40	8,683.65	6,062.85	2,620.80
Hall	Republican Valley	3.87	5,400.00	20,898.00	1,310.60	707.72	602.88
"	Grand Island & Wyoming Central	21.10	4,440.00	93,684.00	4,291.94	2,931.64	1,360.30
Hamilton	Republican Valley	56.41	5,400.00	304,614.00	15,248.21	8,234.02	7,014.19
Harlan	Rep. Valley, K. & So. Western	8.50	3,720.00	31,620.00	1,307.84	1,220.37	87.47
"	Republican Valley	28.49	5,400.00	153,846.00	11,096.60	6,050.23	5,046.37
"	Nebraska & Colorado	11.87	3,900.00	46,293.00	2,441.82	1,587.20	854.62
"	Oxford & Kansas	8.76	3,840.00	33,638.40	1,219.60	1,170.82	48.78
"	Kansas City & Omaha	23.82	3,840.00	91,468.80	4,779.00	3,671.51	1,107.49
Hayes	Republican Valley & Wyoming	12.59	3,600.00	45,324.00	1,785.96	1,607.36	178.60
Hitchcock	Republican Valley & Wyoming	18.10	3,600.00	65,160.00	2,229.76	2,006.80	222.96
"	Republican Valley	31.06	5,400.00	167,724.00	11,076.70	5,981.40	5,095.30
Hooker	Grand Island & Wyoming Central	30.18	4,440.00	133,999.20	7,528.77	5,142.74	2,386.03
Howard	Lincoln & Black Hills	37.66	3,840.00	144,614.40	8,166.05	5,701.38	2,464.67
Jefferson	Republican Valley	26.44	5,400.00	142,776.00	8,248.60	4,454.25	3,794.35
"	Kansas City & Omaha	11.47	3,840.00	44,044.80	1,719.95	1,320.92	399.03
91 Johnson	Republican Valley	24.47	5,400.00	132,138.00	7,044.56	3,799.01	3,245.55
"	Atchison & Nebraska	25.81	6,840.00	176,540.40	7,952.96	5,497.00	2,455.96
Kearney	Burlington & Missouri River	14.39	12,600.00	181,314.00	4,981.03	4,056.94	924.09
"	Kansas City & Omaha	27.38	3,840.00	105,139.20	4,856.85	3,730.08	1,126.77
"	Nebraska & Colorado	28.66	3,900.00	111,774.00	5,908.56	3,840.58	2,067.98
Lancaster	Atchison & Nebraska	19.40	6,840.00	132,696.00	5,894.70	4,206.40	1,688.30
"	Nebraska Railway	32.80	5,520.00	181,056.00	7,945.52	5,753.99	2,191.53
"	Burlington & Missouri	32.54	12,600.00	410,004.00	16,745.53	14,398.78	2,346.75
"	Lincoln & Northwestern	11.39	4,200.00	47,838.60	2,139.99	1,454.53	685.46
Lincoln	Nebraska & Colorado	46.73	3,900.00	182,247.00	11,149.08	7,225.84	3,923.24
Merrick	Republican Valley	4.36	5,400.00	23,544.00	1,967.07	1,062.22	904.85
"	Lincoln & Black Hills	19.01	3,840.00	72,998.40	3,467.17	2,420.73	1,046.44
Nemaha	Republican Valley	28.40	5,400.00	153,360.00	7,048.70	3,806.30	3,242.40

Exhibit "C" to Bill of Complaint—Continued.

County.	Road.	Mileage.	Tenders made on a valuation per mile of	Total valuation.	Amount of taxes on books.	Amount tendered or paid.	Amount to be enjoined.
Nemaha	Nebraska Railway	15.36	$5,520.00	$84,787.20	$5,956.32	$4,109.86	$1,846.46
Nuckolls	Nebraska & Colorado	33.49	3,900.00	130,611.00	7,446.94	4,674.18	2,772.76
"	Republican Valley	20.41	5,400.00	110,214.00	7,273.50	3,965.49	3,308.01
Otoe	Nebraska Railway	50.07	5,520.00	276,386.40	12,389.10	8,517.40	3,851.70
Pawnee	Atchison & Nebraska	10.52	6,840.00	71,956.80	2,841.35	1,947.40	893.95
"	Republican Valley	26.53	5,400.00	143,262.00	8,273.10	4,467.47	3,805.63
Perkins	Nebraska & Colorado	43.85	3,900.00	171,015.00	9,982.61	6,492.85	3,489.76
Phelps	Nebraska & Colorado	44.90	3,900.00	175,110.00	7,672.41	4,434.87	3,237.54
"	Kansas City & Omaha	45	3,840.00	1,728.00	54.00	41.47	12.53
Platte	Lincoln & Northwestern	6.42	4,200.00	26,964.00	1,183.96	786.62	397.34
Polk	Kansas City & Omaha	4.37	3,840.00	16,780.80	502.93	386.23	116.70
Red Willow	Republican Valley	31.13	5,400.00	168,102.00	11,854.14	6,401.45	5,452.69
Red Willow	Oxford & Kansas	19.33	3,840.00	74,227.20	2,415.56	2,318.95	96.61
Richardson	Atchison & Nebraska	43.17	6,840.00	295,282.80	13,957.65	9,442.78	4,514.87
"	Republican Valley	12.83	5,400.00	69,282.00	3,625.05	1,947.53	1,667.52
Saline	Omaha & Southwestern	18.02	7,800.00	140,556.00	4,165.68	3,532.94	632.74
"	Burlington & Missouri River	25.24	12,600.00	318,024.00	10,990.16	8,944.74	2,045.42
"	Kansas City & Omaha	8.57	3,840.00	32,908.80	1,157.40	888.88	268.52
"	Nebraska & Colorado	24.86	3,900.00	96,954.00	4,185.85	2,720.93	1,464.92
Sarpy	Omaha & Southwestern	14.87	7,800.00	115,986.00	4,560.39	4,010.04	550.35
"	Omaha & North Platte	18.79	6,000.00	112,740.00	4,062.69	2,898.71	1,163.98
Saunders	Omaha & North Platte	40.05	6,000.00	240,300.00	9,764.99	6,892.92	2,872.07
"	Burlington & Missouri River	3.91	12,600.00	49,266.00	2,102.41	1,712.41	390.00
Scotts Bluff	Nebraska, Wyoming & Western	40.05	3,000.00	120,150.00	7,541.46	5,011.98	2,529.48
Seward	Lincoln & Northwestern	28.56	4,200.00	119,952.00	5,062.56	3,271.84	1,790.72
"	Nebraska Railway	25.98	5,520.00	143,409.60	5,214.04	3,594.92	1,619.12
Sioux	Grand Island & Wyoming Central	15.30	4,440.00	67,932.00	2,778.00	1,897.59	880.41
"	Nebraska, Wyoming & Western	07	3,000.00	210.00	5.99	3.99	2.00
Sheridan	Grand Island & Wyoming Central	38.49	4,440.00	170,895.60	8,354.38	5,447.00	2,907.38
Sherman	Grand Island & Wyoming Central	14.16	4,440.00	62,870.40	5,173.38	3,495.76	1,677.62

"	Lincoln & Black Hills	23.97	3,840.00	92,044.80	7,310.57	5,803.30	1,707.21
Thayer	Nebraska & Colorado	25.13	3,960.00	98,007.00	5,766.00	3,747.94	2,018.06
"	Republican Valley	18.60	5,400.00	100,440.00	6,429.90	3,472.15	2,597.75
Thomas	Grand Island & Wyoming Central	33.30	4,440.00	147,852.00	7,391.10	5,048.67	2,342.43
Valley	Lincoln & Black Hills	32.61	3,840.00	125,222.40	6,490.96	4,531.89	1,959.07
Webster	Republican Valley	43.79	5,400.00	236,466.00	13,835.80	7,471.34	6,364.46
"	Nebraska & Colorado	26.03	3,900.00	101,517.00	4,589.10	2,982.91	1,606.19
Wheeler	Lincoln & Black Hills	3.36	3,840.00	12,902.40	794.64	554.80	239.84
York	Kansas City & Omaha	33.59	3,840.00	128,985.60	4,575.18	3,517.86	1,057.32
"	Nebraska Railway	12.53	5,520.00	69,165.60	5,955.65	1,859.63	2,297.87
"	Republican Valley	12.02	5,400.00	64,908.00		1,798.15	
Douglas	Omaha & Southwestern	4.86	7,800.00	37,908.00	1,239.13	1,077.95	161.18
"	Omaha & North Platte	9.17	6,000.00	55,020.00	2,375.03	1,543.84	831.19

Endorsed: "Bill of Complaint" Filed Nov. 30, 1904. Geo. H. Thummel, Clerk.

92 Thereupon afterwards, to-wit: At the November Term 1904 of said Court, and on the 30th day of November, 1904, the following Order was signed and filed in said case, and duly entered of record in Journal "3" Page — of said Court, to-wit:

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska; A. F. Carlson, as Treasurer of Blaine County, Nebraska; Charles W. Brennan, as Treasurer of Box Butte County, Nebraska; M. N. Troupe, as Treasurer of Buffalo County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. Wheeler, as Treasurer of Cass County, Nebraska; H. M. Flory, as Treasurer of Chase County, Nebraska; A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; M. J. Higgins, as Treasurer of Colfax County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; Robert O. Fink, as Treasurer of Douglas County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; E. J. Dempster, as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; E. P. Pyle, as Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage County, Nebraska; W. C. Johns, as Treasurer of Garfield County, Nebraska; W. L. Tilden, as Treasurer of Gosper County, Nebraska; C. T. Weeks, as Treasurer of Greeley County, Nebraska; F. E. Slusser, as Treasurer of Hall County, Nebraska; J. B. Cunningham, as Treasurer of Hamilton County, Nebraska; R. E. Counce, as Treasurer of Hayes County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William W. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt, as Treasurer of Kearney County, Nebraska; Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; F. K. Sprague, as Treasurer of Merrick County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelly, as Treasurer of Otoe County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as
93 Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; D. A. Becher, as Treasurer of Platte County, Nebraska; Jud Jolcomb, as Treasurer of Polk County, Nebraska; B. G. Gossard, as Treasurer of Red Willow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; Carl M. Lux, as Treasurer of Sioux County, Nebraska; J. A. Brown, as Treasurer of Harlan County, Nebraska;

W. H. Nickles, as Treasurer of Grant County, Nebraska; L. J. Malmsten, as Treasurer of Dawson County, Nebraska; A. R. Morrison, as Treasurer of Sarpy County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N. Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as Treasurer of Thomas County, Nebraska; W. L. McNutt, as Treasurer of Valley County, Nebraska; G. R. McGrary, as Treasurer of Webster County, Nebraska; Peter Dahlsten, as Treasurer of Wheeler County, Nebraska; R. Henderson, as Treasurer of York County, Nebraska Defendants.

Temporary Writ of Injunction.

On the 30th day of November, 1904, this cause coming on for hearing on the motion of James E. Kelby, Solicitor for the complainant, for a writ of injunction and a restraining order, and the Court having examined the Bill of Complaint and the papers therein set forth, and being fully advised in the premises:

It is Ordered and Adjudged that the hearing on the application for a writ of injunction be fixed for the 27th day of December, 1904, and pending the hearing and determination of said motion, the said defendants,

F. C. Babcock, as Treasurer of Adams County, Nebraska; A. F. Carlson as Treasurer of Blaine County, Nebraska; Charles W. Brennan as Treasurer of Box Butte County, Nebraska; M. N. Troupe as Treasurer of Buffalo County, Nebraska; J. C. Perry as Treasurer of Butler County, Nebraska; William D. Wheeler, as Treasurer of Cass County, Nebraska; H. M. Flory as Treasurer of Chase County, Nebraska; A. K. Greenlee as Treasurer of Cheyenne County,
94 Nebraska; F. T. Swanson as Treasurer of Clay County, Nebraska; M. J. Higgins as Treasurer of Colfax County, Nebraska; W. A. George as Treasurer of Custer County, Nebraska; W. T. Wilson as Treasurer of Dawes County, Nebraska; Robert O. Fink as Treasurer of Douglas County, Nebraska; C. C. Barr as Treasurer of Dundy County, Nebraska; E. J. Dempster as Treasurer of Fillmore County, Nebraska; C. C. Brown as Treasurer of Franklin County, Nebraska; E. P. Pyle as Treasurer of Frontier County, Nebraska; B. F. Moore as Treasurer of Furnas County, Nebraska; W. W. Wright as Treasurer of Gage County, Nebraska; W. C. Johns as Treasurer of Garfield County, Nebraska; W. L. Tilden as Treasurer of Gosper County, Nebraska; C. T. Weeks as Treasurer of Greeley County, Nebraska; F. E. Slusser, as Treasurer of Hall County, Nebraska; J. B. Cunningham as Treasurer of Hamilton County, Nebraska; R. E. Counce as Treasurer of Hayes County, Nebraska; J. P. Wertz as Treasurer of Hitchcock County, Nebraska; F. S. Albright as Treasurer of Hooker County, Nebraska; J. A. Brown as Treasurer of Harlan County, Nebraska; L. J. Malmsten as Treasurer

of Dawson County, Nebraska; C. E. Taylor as Treasurer of Howard County, Nebraska; S. R. Merrell as Treasurer of Jefferson County, Nebraska; William W. Wheatley as Treasurer of Johnson County, Nebraska; Rollin Orcutt as Treasurer of Kearney County, Nebraska; Benjamin F. Knight as Treasurer of Lancaster County, Nebraska; E. S. Davis as Treasurer of Lincoln County, Nebraska; F. K. Sprague as Treasurer of Merrick County, Nebraska; D. J. A. Dirks as Treasurer of Nemaha County, Nebraska; C. C. Dudley as Treasurer of Nuckolls County, Nebraska; R. W. Kelly as Treasurer of Otoe County, Nebraska; O. H. Loèh as Treasurer of Pawnee County, Nebraska; C. L. Granlund as Treasurer of Phelps County, Nebraska; E. H. Sexson as Treasurer of Perkins County, Nebraska; D. A. Becher as Treasurer of Platte County, Nebraska; Jud Holcomb as Treasurer of Polk County, Nebraska; B. G. Gossard as Treas-
95 urer of Red Willow County, Nebraska; Martin Zook as Treasurer of Richardson County, Nebraska; C. E. Bowlby as Treasurer of Saline County, Nebraska; Carl M. Lux as Treasurer of Sioux County, Nebraska; A. R. Morrison as Treasurer of Sarpy County, Nebraska; Oscar Hanson as Treasurer of Saunders County, Nebraska; Thomas Preston as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz as Treasurer of Seward County, Nebraska; Lee Fritz as Treasurer of Sheridan County, Nebraska; S. N. Sweetland as Treasurer of Sherman County, Nebraska; J. A. Bothwell as Treasurer of Thayer County, Nebraska; Chris Fritz as Treasurer of Thomas County, Nebraska; W. L. McNutt as Treasurer of Valley County, Nebraska; G. A. McCreary as Treasurer of Webster County, Nebraska; Peter Dahlsten as Treasurer of Wheeler County, Nebraska; R. Henderson as Treasurer of York County, Nebraska; and W. H. Nickles as Treasurer of Grant County, Nebraska; and their respective clerks, servants, agents, employés, and each and all of them are hereby commanded and directed to refrain:

1st. From attempting in any manner to collect the taxes levied against the Complainant herein, or any of its lines, viz.: Atchison and Nebraska Railroad; Burlington and Missouri River Railroad in Nebraska; Chicago, Nebraska and Kansas Railroad; Grand Island and Wyoming Central Railroad; Kansas City and Omaha Railroad; Lincoln and Black Hills Railroad; Omaha and Southwestern Railroad; Nebraska Railway; Nebraska and Colorado Railroad; Nebraska, Wyoming and Western Railroad; Oxford and Kansas Railroad; Republican Valley, Kansas and Southwestern Railroad; Republican Valley Railroad; Lincoln and Northwestern Railroad; Omaha and North Platte Railroad, and Republican Valley and Wyoming Railroad, or from enforcing the terms of any tax warrant, or warrants,
96 for or including said taxes which may now, or hereafter be placed in their hands.

2nd. From in any manner attempting to carry out the provisions of Section 10560 of Cobbey's Annotated Statutes of Nebraska, for the year 1903, or to take any steps or procedure under said Section.

3rd. From notifying any agent or officer of said Complainant in the county where it is alleged said tax is delinquent, and from notifying any officer or agent of the Complainant, to pay over any

moneys that may be in his hands or that may hereafter come into his hands belonging to the Complainant.

4th. And from in any way, form or manner attempting to collect said tax until the further order of this Court.

Nothing herein shall be construed to prevent the defendants from giving and serving any and all necessary notices required by the laws of the State of Nebraska, preparatory to the collection of taxes before February 1st. 1905, meaning the notices required by Section 154 of Chapter 73 of the Session Laws of 1903; the intent and purpose of this restraining order being to restrain all action under Section 161 of said Chapter. It is further

Ordered, that the acceptance by the defendants of any tenders made by the complainant herein shall in no way or manner affect or prejudice any of their rights in this cause nor shall it be considered as a waiver of any of their rights.

Dated at Omaha, Nebraska, this 30th day of November, 1904.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 30, 1904. Geo. H. Thummel, Clerk.

97 Thereupon afterwards, to-wit: On the 16th day of July, 1905 a Demurrer to Bill of Complaint was filed in said case, which said Demurrer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska; A. F. Carlson, as Treasurer of Blaine County, Nebraska; Charles W. Brennan, as Treasurer of Box Butte County, Nebraska; M. N. Troupe, as Treasurer of Buffalo County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. Wheeler, as Treasurer of Cass County, Nebraska; H. M. Flory, as Treasurer of Chase County, Nebraska; A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; M. J. Higgins, as Treasurer of Colfax County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; Robert O. Fink, as Treasurer of Douglas County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; S. J. Dempster, as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; E. P. Pyle, Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage County, Nebraska; W. C. Johns, as Treasurer of Garfield County, Nebraska; W. L. Tilden, as Treasurer of Gosper County, Nebraska; C. T. Weekes, as Treasurer of Greeley County, Nebraska; F. E. Slusser, as Treasurer of Hall County, Nebraska; J. B. Cunningham, as Treasurer of Hamilton County, Nebraska; R. E. Counce, as Treas-

urer of Hayes County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William W. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt, as Treasurer of Kearney County, Nebraska; Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; F. K. Sprague, as Treasurer of Merrick County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelly, as Treasurer of Otoe County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as
98 Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; D. A. Becher, as Treasurer of Platte County, Nebraska; Jud Holcomb, as Treasurer of Polk County, Nebraska; B. G. Gossard, as Treasurer of Red Willow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; Carl M. Lux, as Treasurer of Sioux County, Nebraska; J. A. Brown, as Treasurer of Harlan County, Nebraska; W. H. Nickles, as Treasurer of Grant County, Nebraska; L. J. Malmsten, as Treasurer of Dawson County, Nebraska; A. R. Morrison, as Treasurer of Sarpy County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N. Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as Treasurer of Thomas County, Nebraska; W. L. McNutt, as Treasurer of Valley County, Nebraska; G. R. McCreary, as Treasurer of Webster County, Nebraska; Peter Dahlsten, as Treasurer of Wheeler County, Nebraska; R. Henderson, as Treasurer of York County, Nebraska, Defendants.

Joint and Several Demurrer to Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States within and for the District of Nebraska:

Joint and several Demurrer of the above named defendants, F. C. Babcock as Treasurer of Adams County, Nebraska; A. F. Carlson as Treasurer of Blaine County, Nebraska; Charles T. Brennan as Treasurer of Box Butte County, Nebraska; M. N. Troupe as Treasurer of Buffalo County, Nebraska; J. C. Perry as Treasurer of Butler County, Nebraska; William D. Wheeler as Treasurer of Cass County, Nebraska; H. M. Flory, as Treasurer of Chase County, Nebraska; A. K. Greenlea as Treasurer of Cheyenne County, Nebraska; F. T. Swanson as Treasurer of Clay County, Nebraska; M. J. Higgins as Treasurer of Colfax County, Nebraska;

W. A. George as Treasurer of Custer County, Nebraska; W. T. Wilson as Treasurer of Dawes County, Nebraska; L. J.
99 Malmsten as Treasurer of Dawson County, Nebraska; Robert O. Fink as Treasurer of Douglas County, Nebraska; C. C. Barr as Treasurer of Dundy County, Nebraska; E. J. Dempster as Treasurer of Fillmore County, Nebraska; E. P. Pyle as Treasurer of Frontier County, Nebraska; B. F. Moore as Treasurer of Furnas County, Nebraska; W. W. Wright as Treasurer of Gage County, Nebraska; W. C. Johns as Treasurer of Garfield County, Nebraska; W. L. Tilden as Treasurer of Gosper County, Nebraska; W. H. Nickles as Treasurer of Grant County, Nebraska; C. T. Weekes as Treasurer of Greeley County, Nebraska; F. E. Slusser as Treasurer of Hall County, Nebraska; J. B. Cunningham as Treasurer of Hamilton County, Nebraska; J. A. Brown as Treasurer of Harlan County, Nebraska; R. E. Counce as Treasurer of Hayes County, Nebraska; J. P. Wertz as Treasurer of Hitchcock County, Nebraska; F. S. Albright as Treasurer of Hooker County, Nebraska; C. E. Taylor as Treasurer of Howard County, Nebraska; S. R. Merrell as Treasurer of Jefferson County, Nebraska; William W. Wheatley as Treasurer of Johnson County, Nebraska; Rollin Orcutt as Treasurer of Kearney County, Nebraska; Benjamin F. Knight as Treasurer of Lancaster County, Nebraska; E. S. Davis as Treasurer of Lincoln County, Nebraska; F. K. Sprague as Treasurer of Merrick County, Nebraska; D. J. Dirks as Treasurer of Nemaha County, Nebraska; C. C. Dudley as Treasurer of Nuckolls County, Nebraska; R. W. Kelly as Treasurer of Otoe County, Nebraska; O. H. Loch as Treasurer of Pawnee County, Nebraska; E. H. Sexson as Treasurer of Perkins County, Nebraska; C. L. Granlund as Treasurer of Phelps County, Nebraska; D. A. Becher as Treasurer of Platte County, Nebraska; Jud. Holcomb as Treasurer of Polk County, Nebraska; B. G. Gossard as Treasurer of Red Willow County, Nebraska; Martin Zook as Treasurer of Richardson County, Nebraska; C. E. Bowlby as Treasurer of Saline County, Nebraska; A. R. Morrison
100 as Treasurer of Sarpy County, Nebraska; Oscar Hanson as Treasurer of Saunders County, Nebraska; Thomas Preston as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz as Treasurer of Seward County, Nebraska; Lee Fitz as Treasurer of Sheridan County, Nebraska; S. N. Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell as Treasurer of Thayer County, Nebraska; Chris Fritz as Treasurer of Thomas County, Nebraska; W. L. McNutt as Treasurer of Valley County, Nebraska; G. R. McCrary as Treasurer of Webser County, Nebraska; Peter Dahlsten as Treasurer of Wheeler County, Nebraska; Carl M. Lux as Treasurer of Sioux County, Nebraska; and R. Henderson as Treasurer of York County, Nebraska, to the bill of complaint of the above named plaintiff.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, jointly and severally demur to the said bill.

And for cause of demurrer show:

I. That it appears by the plaintiff's own showing by the said bill it is not entitled to the relief prayed by said bill against these defendants or any of them.

II. That it appears from said bill of complaint of plaintiff that this court has no jurisdiction to hear and determine this action.

III. That said bill of complaint of plaintiff is wholly without equity.

IV. That it appears upon the face of said bill that the plaintiff has an adequate remedy at law.

V. That plaintiff has not made or stated such a case as entitles it in a court of equity to the relief prayed.

101 Wherefore, and for divers other good causes of demurrer appearing on said bill, these defendants jointly and severally demur thereto, and they pray the judgment of this Honorable Court whether they or any of them shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

NORRIS BROWN,
Attorney General of State of Nebraska, Solicitor and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion well founded in point of law.

Lincoln, Nebraska, January 14, 1905.

NORRIS BROWN,
Of Counsel for Defendants.

STATE OF NEBRASKA, *County of Lancaster, ss:*

I Benjamin F. Knight, being first duly sworn according to law, depose that I am one of the defendants named in the bill of complaint in this suit, and that the foregoing demurrer is not interposed for delay.

BENJAMIN F. KNIGHT.

Subscribed in my presence and sworn to before me this 14th day of January, 1905.

[SEAL.] NANNIE CANNING,
Notary Public.

Filed Jan. 16, 1905.

GEO. H. THUMMEL, *Clerk.*

102 Thereupon afterwards, to-wit:—On the 30th. day of January, 1905, Motion to Amend Bill of Complaint and Amendment was filed in said case which said Motion etc. is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
F. C. BABCOCK ET AL., Defendants.

Motion.

Comes the complainant herein and asks leave to amend its bill of complaint herein by substitution — the following in place of all that portion of paragraph 15, beginning at and following the first line of the 4th. subdivision thereof; that is to say, the words:

"The Board of Equalization and Assessment of Nebraska acting at its meeting commencing in May and terminating in June, 1904, for the purpose of ascertaining and fixing the taxable value of the railroad property in the State of Nebraska, assessible by and under the law for the purpose of taxation, etc. etc.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY,
By C. J. GREENE, *Its Attorney.*

103 And your orator further avers that during the sessions of the State Board of Equalization and Assessment, held in May and June, 1904, to value and assess the railroad properties subject to its jurisdiction, the individual members thereof, induced by the motives and considerations just described, and assuming that the grand assessment of all taxable property in the state would be fixed approximately at the sum of $400,000,000, thereby adding approximately 80% to the valuations thereof, for the previous year, individually arranged and agreed among themselves, in advance of the final hearing and submission before the Board, and without regard to the facts and circumstances presented, that they would, pretending to act as the State Board of Equalization and Assessment, add approximately $19,000,000 to the assessment of the aforesaid properties, by the State Board of Equalization and Assessment, for taxable purposes in 1903, and assess them at $46,177,563 for taxation in 1904; and would also add the sum of $8,976,209.50 to the assessment of your orator's property, made by the same Board, for taxable purposes in 1903, and assess the same at $20,235,186 for taxation in 1904, thereby arbitrarily increasing by 73% the taxes thereon for 1903; notwithstanding the members aforesaid well knew, and your orator charges the fact to be, that the property was substantially of the same character, extent and value in 1904 as it was in 1903.

Your orator further avers that in valuing and assessing its properties subject to the jurisdiction of the Board, the members thereof recognized and knew that an assessment of $20,235,186 thereon would require a valuation of approximately $38,000.00 per mile

for each and every mile of its road in the state, regardless
104 of its actual value, and with this knowledge, and pursuant to the understanding and agreement aforesaid, they adopted and used the unit plan prescribed in the act defining the powers and duties of the State Board of Equalization and Assessment as a device to work out these valuations and assessments, and thereupon, pretending to act as such Board, and in pretended compliance with the provisions of the act aforesaid, they took into account only the stocks and bonds issued by the Iowa and Illinois corporations, which are based upon and represent your orator's entire property and interest, and designedly and arbitrarily fixed the value thereof at $314,378,750, and designedly and arbitrarily applied it to the 8,112.77 miles of railroad so as aforesaid returned by your orator to the State Board in compliance with the act aforesaid.

And your orator further avers that these stocks and bonds were not of the value of $314,378,750, but were of a value not exceeding $278,000,000; and that the 8,114.77 miles of railroad were not of the value of $314,378,750, but were of a value not exceeding $225,000,000.

In this behalf, your orator avers that the members aforesaid gave no consideration whatever to the facts and circumstances presented to the Board, but gave consideration only to fixing a valuation of the total mileage of railroad so returned to which the computations prescribed in the act aforesaid could be applied to produce the valuations and assessments per mile of its road in the state of Nebraska, and the total valuations and assessments thereon, so as aforesaid, understood and agreed upon.

And your orator further avers that the members aforesaid, having in the manner aforesaid declared the total value of your
105 orator's property in the several states and applied it to the total mileage of its road therein, and pursuant to the understanding and agreement between them, made the computations prescribed in the act aforesaid, and ascertained and declared the final result, namely, $7,750.00 to be the assessment of each and every mile of the road in the state of Nebraska, for taxable purposes in 1904, and thereupon returned to the clerk of each of the several counties in which the same is in part located, its distributive share under the law, as the assessment of the road in such county.

And your orator further shows that if it shall appear, notwithstanding the evidence to the contrary, that the members of the Board acted in good faith and in strict performance of their duties and function as the State Board of Equalization and Assessment, and that they did fix the actual or market value of its stocks and bonds upon consideration of the facts and circumstances presented, and thereupon applied the value so fixed to the total mileage of your orator's road in the several states, and made the computations prescribed in the act defining its powers and duties, and declared the result of the computations to be the valuation and assessment respectively of each mile of road to be assessed and reported the same to the clerks of the several counties, as required by law, nevertheless, your orator submits that owing to the location, circumstances and con-

ditions of its road and properties in the several states, and the manner in which the computation was made, as aforesaid, the necessary result of such process and proceeding was to increase the value of its road in the state of Nebraska, by adding thereto a very considerable amount of the value of its roads and properties
106 in other states, and thereby to import into Nebraska for the purposes of taxation its property located in other states. And your orator submits that whether the valuations and assessments were made by the individual members, pursuant to their understanding and agreement, in the manner described; or by the Board of Equalization and Assessment in compliance with the act defining its powers and duties, in the manner described, the proceedings and process operate to deprive your orator of its rights in violation of the several provisions of the Federal Constitution; that is to say, clause 3, section 8, article 1; and section 1 of the 14th amendment.

Endorsed: Filed Jan. 30 1905 Geo. H. Thummel, Clerk.

107 Thereupon afterwards, to-wit:—At the November 1904 Term of said Court, and on the 30th day of January, 1905, the following proceedings were had and done in said case, as appear of record in Journal No. "4" of said Court, to-wit:—

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
vs.
F. C. BABCOCK ET AL.

It is ordered that the hearing of this cause be and the same hereby is continued until the 4th day of February, at 10 o'clock; restraining order to continue in force until the disposition of the Demurrer. Leave is hereby given to complainant to amend Bill herein instanter.

108 Thereupon afterwards, to-wit:—At the November 1904 Term of said Court, and on the 11th day of February, 1905, the following proceedings were had and done in said case as appear of record in Journal No. "4" of said Court, to-wit:—

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
vs.
F. C. BABCOCK ET AL.

This cause coming on for hearing, the same is argued by the respective attorneys, duly submitted on the Demurrer to the Bill and by the Court taken under advisement.

109 Thereupon afterwards, to-wit: On the 15th day of March, 1905, Memorandum Opinion was filed in said case, which said Memorandum Opinion is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

No. 79, W.

UNION PACIFIC RAILROAD COMPANY, Complainant,
v.
ROBERT O. FINK, Treasurer of Douglas County, *et al.*, Respondents.

No. 80, W.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
v.
F. C. BABCOCK, Treasurer of Adams County, *et al.*, Respondents.

Memorandum Opinion.

MUNGER, *D. J.*:

Bills have been filed in each of these cases to restrain the several respondents as County Treasurers of certain counties from enforcing the collection of a portion of the taxes assessed for the year 1904 upon the complainant's lines of railroad within this State. Demurrers have been filed to the respective bills, and as the bills set forth substantially the same material facts the two cases are considered and disposed of together.

The first question which arises is as to the jurisdiction
110 of the Court over some of the respondents for the reason that the amount in controversy as to some of the counties does not exceed $2,000.00.

In determining the amount in controversy which gives this Court jurisdiction the Supreme Court, in Walter *v.* Northeastern Ry. Co., 147, U. S. 370, held that it was the amount of the tax sought to be enjoined which determined the jurisdiction, and it is the amount sought to be enjoined as against each separate county which determines the jurisdiction of this Court with reference to such county.

No. Pacific Railroad *v.* Walker, 148 U. S. 392.
Fishback *v.* Western Union Tel. Co., 161 U. S. 100.
Citizens Bank *v.* Cannon, 164 U. S. 322.
Wheless *v.* St. Louis, *et al.*, 180 U. S. 379.

It follows that in case No. 79 W. the jurisdictional amount in controversy in insufficient to give this Court jurisdiction and the bill is dismissed as against the Treasurer of Madison County, Valley County, Polk County, Greeley County, Sarpy County, and Custer County; and in Case No. 80 W., the case is dismissed as to the Treasurer of the Counties of Blaine, Buffalo, Chase, Colfax, Dawson, Douglas, Garfield, Gosper, Grant, Hall, Hayes, Merrick, Platte, Polk, Sarpy, Sioux, Valley and Wheeler.

As to the remaining respondents the following principles of law are thoroughly established and applicable in considering the demurrer:

First: A property owner whose property is subject to taxation is entitled to have in the valuation of his property for assessment the free exercise of the mind and judgment of the assessing officer, free from fraud or coercion.

Second: That while a court of equity will not enjoin an
111 assessment of property for taxation on the ground of over-valuation or inequality as compared with the assessment of other property when such over-valuation or inequality is not the intentional act of the assessing officer, yet, where it appears that such inequality is the result of the intentional act of the assessing officers, a court of equity will grant relief.

Third: Where the state assessing board in assessing railroad property takes as a basis in determining its value the market value of the stocks and bonds of such railroad company, such market value being enhanced by many millions of dollars of property not used in the actual business of the company and located and having a situs outside of the State, without deducting the value of such property from such market value of the stocks and bonds, such assessment is void.

The several bills in this case charge the fact to be that the members of the State Assessing Board did not exercise their free and individual judgment in fixing the value of complainants' railroads, but they were coerced by outside influences into arbitrarily fixing the gross, aggregate sum at which all the railroads in the State should be valued and then divided such aggregate amount among the several railroads according to the market value of their stocks and bonds without deducting therefrom lands and property owned by complainants within the State, which was assessed by local assessors and not within the jurisdiction of the State Board, and several millions of dollars of stocks and bonds of other companies owned and held by the complainant companies, the value of which entered into and determined the value of the stocks and bonds of the complainant companies, but which were not used in the operation of their
112 roads and the situs of which was not within the State.

Such facts being alleged in the bills and admitted by the demurrers, it results that the demurrers are overruled.

Respondents are given twenty days in which to answer or elect to stand upon their demurrers. If they answer, complainants to plead thereto within ten days thereafter. As soon as the issues are joined the case will be referred to a Master to take testimony. If either party desire that the evidence be taken orally the Court will fix a time within which the respective parties shall take their evidence as provided in Rule 67.

Endorsed: Filed Mar. 15 1905. Geo. H. Thummel, Clerk.

113 Thereupon afterwards, to-wit: On the 15th day of March, 1905 an Order was filed in said case, which said Order is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

No. 80, W.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
F. C. BABCOCK, Treasurer of Adams County, *et al.*, Respondents.

This cause came on to be heard at this term of court upon the 11th day of February, 1805, on the joint and several demurrers of the defendants and was by the Court taken under advisement; and now on this 15th. day of March, 1905, after consideration thereof,

It is ordered, adjudged and decreed as follows:

That the demurrer of the defendants, A. F. Carlson, M. N. Troupe, H. M. Flory, M. J. Higgins, L. J. Malmsten, Robert O. Fink, W. C. Johns, W. L. Tilden, W. H. Nickels, F. E. Slusser, R. E. Counce, F. K. Sprague, D. A. Becher, Jud. Holcomb, A. R. Morrison, Carl M. Lux, W. L. McNutt and Peter Dahlsten, be and the same is hereby sustained, for the reason that the court has no jurisdiction because the amount in controversy as to each of said defendants is less than $2,000. As to some of said defendants, the total tax levied in the county of which they are treasurer is less than $2,000.00; as to some of the defendants the total tax levied in the county of which they are treasurer exceeds $2,000.00, but before filing the bill of complaint a portion of the tax had been tendered by
114 complainant and accepted by said treasurers, leaving a balance of less than $2,000.00; and as to some, while the tax exceeded $2,000.00, complainant- in their bill only ask to enjoin an amount less than $2,000.00, being a balance over and above an amount tendered and refused; and that said bill, as to each of said defendants, be and the same is hereby dismissed for want of jurisdiction, and that said defendants recover their costs taxed at $——.

To which order sustaining the demurrer and dismissing the bill as to each of said defendants, complainant excepts.

As to each of the other defendants in the case the demurrer is overruled; to which each of the defendants duly excepts.

It is further ordered that the defendants not dismissed from this case be given 20 days in which to answer, and that complainant be given 10 days thereafter to plead thereto.

The application for a temporary order of injunction is granted as prayed against the defendants not dismissed out of the case upon Complainant giving a bond with the conditions required by law in the sum of $10,000.00, with surety to be approved by the Clerk of this Court.

Complainant prays an appeal in open Court from the order sustaining the demurrer and dismissing the bill as to the defendants before named, which appeal is allowed and a supersedeas granted upon filing a bond in the sum of $5,000.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Mar. 15 1905 Geo. H. Thummel, Clerk.

115 Thereupon afterwards, to-wit: On the 3rd. day of April, 1905, the joint and several answer of defendants to complainant's amended bill of complaint was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

v.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Defendants.

Joint and Several Answer of Defendants to the Amended Bill of Complaint of Complainant.

To the Honorable the Judges of the Circuit Court of the United States within and for the District of Nebraska:

Joint and several Answer of defendants, F. C. Babcock, Charles W. Brennen, J. C. Perry, William D. Wheeler, A. K. Greenlee, F. T. Swanson, W. A. George, W. T. Wilson, C. C. Barr, E. J. Dempster, C. C. Brown, E. P. Pyle, B. F. Moore, W. W. Wright, C. T. Weekes, J. B. Cunningham, J. A. Brown, J. P. Wertz, F. S. Albright, C. E. Taylor, S. R. Merrell, William W. Wheatley, Rollin Orcutt, Benjamin F. Knight, Ed. S. Davis, D. J. A. Dirks, C. C. Dudley, R. W. Kelly, O. H. Loch, E. H. Sexson, C. L. Granlund, B. G. Gossard, Martin Zook, C. E. Bowlby, Oscar Hanson, Thomas Preston, L. F. Schultz, Lee Fritz, S. N. Sweetland, J. A. Bothwell, Chris Fritz, G. R. McCrary, and R. Henderson, to the bill of complaint of complainant, the Chicago, Burlington & Quincy Railway Company.

116 These defendants, respectively reserving their objections and exceptions to the overruling of their demurrer to the amended bill of complaint of complainant, now and at all times hereafter saving to themselves all and all manner of benefit of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

I.

That the complainant, the Chicago, Burlington and Quincy Railroad Company, is a corporation organized and existing under and by virtue of the laws of the state of Iowa, and is a citizen and resident of said state of Iowa.

II.

That said defendants F. C. Babcock, Charles W. Brennan, J. C. Perry, William B. Wheeler, A. K. Greenlee, F. T. Swanson, W. A. George, W. T. Wilson, C. C. Barr, E. J. Dempster, C. C. Brown, E. P. Pyle, B. F. Moore, W. W. Wright, C. T. Weekes, J. B. Cunningham, J. A. Brown, J. P. Wertz, F. S. Albright, C. E. Taylor, S. R. Merrell, William W. Wheatley, Rollin Orcutt, Benjamin F. Knight, Ed. S. Davis, D. J. A. Dirks, C. C. Dudley, R. W. Kelly, O. H. Loch, E. H. Sexson, C. L. Granlund, B. G. Gossard, Martin Zook, C. E. Bowlby, Oscar Hanson, Thomas Preston, L. F. Schultz, Lee Fritz, S. N. Sweetland, J. A. Bothwell, Chris Fritz, G. R. McCrary and K. Henderson, are severally citizens of the state of Nebraska.

III.

That the Chicago, Burlington and Quincy Railway Company, agreeable to its charter and the laws of the several states in
117 which it operates, is empowered to construct, purchase, lease or otherwise acquire, and to maintain and operate a railroad through the several cities, counties and states mentioned in paragraph three of complainant's said bill of complaint.

IV.

That the Chicago, Burlington and Quincy Railway Company, pursuant and agreeable to the laws of the several states traversed by its lines, did on or about the first day of October, 1901, lease from the Illinois corporation, its railroad, properties, rights, privileges, immunities and franchises, extending from the city of Chicago, Illinois, into and traversing the several states of Illinois, Missouri, Iowa, Kansas, Nebraska, Colorado, Minnesota, South Dakota, Montana, Wisconsin and Wyoming, consisting of a mileage of 8,112.77 miles. That of the said total mileage, 4,097.50 miles were and are within the territory lying west of the Missouri River, and 4,015.27 miles are in the territory lying east of said river, apportioned as follows:

Illinois, 1,405.21 miles; Missouri, 1,022.59 miles; Iowa, 1,357.32 miles; Wisconsin, 222.57 miles; Minnesota, 23.61 miles; Montana, 187.28 miles; Wyoming, 351.23 miles; South Dakota, 257.56 miles; Colorado, 394.38 miles; Kansas, 259.62 miles. Nebraska, 2,611.10 miles.

That in addition to said main line mileage operated by the complainant, said complainant also obtained under said lease from the said Illinois Company certain valuable trackage rights in various other railroad companies in several of the states traversed by said company, which included the right to use 211.06 miles of
118 which .53 of a mile is in Wisconsin; 9.40 miles are in Missouri; 68.16 miles are in Iowa; 14.84 miles are in Minnesota; .84 of a mile is in Kansas; 12.62 miles are in Montana; 20.28 miles are in Nebraska; 34.97 miles are in Colorado; and 49.42 miles are in Illinois.

V.

That the said Chicago, Burlington and Quincy Railway Company, agreeable to its charter and the law, in the year 1901 acquired under said lease and has ever since held, maintained and operated certain lines of railroad in the state of Nebraska as detailed in paragraph five of complainant's said bill of complaint.

VI.

That the said Chicago, Burlington and Quincy Railway Company became the owner by virtue of said lease contract with the said Illinois company of certain other properties and assets which are set out in detail in paragraph six of complainant's said bill of complaint; which these defendants allege were employed by said company in fostering and promoting traffic on complainant's railroad lines aforesaid, being means and instruments employed to that end; but deny that said properties and assets were of the value of $29,000,000.

VII.

Admit that the state board of equalization and assessment of Nebraska is a lawfully constituted board, consisting of the governor, auditor, treasurer, secretary of state, and commissioner of public lands and buildings of the state of Nebraska, and has power to assess all property of the railroads and railroad corporations in said state, except machine repair shops, general office buildings, store
119 houses, and all real and personal property outside of right of way and depot grounds, which are by law required to be listed and assessed where they may be situated; that said state board is by law required to meet annually on the first Monday in May of each year for the purpose of ascertaining the value of railroad property in said state, with the exceptions above noted, for taxation purposes, and to assess the same as personal property.

VIII.

Defendants further answering paragraph eight of complainant's bill of complaint, say that during the month of April, 1904, said complainant returned to the said state board a sworn statement or schedule as required by law showing:

First: The right of way, track and road-bed, the entire mileage of said railroad in and without the state of Nebraska.

Second: The length of each side or second track and turnout, spur and warehouse track, and aggregate length of said side or second track, together with the county, township, precinct, city, village, school and road district in which located.

Third: A list giving size, location, material and value of all depots, station houses, machine shops, stock yards, scales and other buildings situated wholly or in part on the right of way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith.

Fourth: The number of ties in track per mile, the weight of iron or steel rails per yard used in the main or side track, the joints or chairs used in track, kind of ballasting, the length of time iron or steel had been used and the length of time the road had been built.

Fifth: A list of the rolling stock belonging to or operated
120 by the complainant company, the class and value of all locomotives, passenger and other cars owned or used by said company in and without the state of Nebraska, together with a statement of the number of miles traveled by each of said classes of cars over the lines of complainant's railroad within the state of Nebraska.

Sixth: The amount of capital stock of complainant and said Illinois company, the number of shares into which the same was divided, the amount of stock paid up, but deny that the market or true value thereof was given said state board by said complainant. Giving also the amount of complainant's indebtedness, secured and unsecured, except current expenses, the location and value of complainant's real estate and personal property in the state of Nebraska which was locally assessed.

Seventh: A return of the value of all tools and materials used for repairs, and of all personal property of complainant within the state together with such other information as said state board required in order to enable it to apportion the rolling stock of the complainant between its main and branch lines.

Eighth: A statement of all bridges and their location, value, size and character.

Ninth: The total gross and net earnings of complainant during the year preceding January 1, 1904, and the total amount expended in the operation and maintenance of said property; also the gross and net earnings of complainant alone within the state of Nebraska; also the dividend last declared upon complainant's stock and the amount thereof, and the date, number and amount of
all dividends declared upon said stock during the year next
121 preceding, and much other information which said state board required of complainant to enable the said board to take into consideration in ascertaining and fixing the value of complainant's said property in the said state of Nebraska.

Further answering said paragraph eight of said bill of complaint, said defendants severally say that, in addition to the foregoing things, statements and returns, complainant furnished said state board with the following facts, to-wit:

(A) Schedule showing the capital stock authorized and the number of shares into which said capital stock is divided. The amount of capital stock paid up. The market value of such stock, or if no market value then the true value of the shares of stock. The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road.

Chicago, Burlington & Quincy R. R. Co. June 30th, 1903.

1st.

The amount of capital stock authorized and the number of shares into which such capital is divided with amount of each share:

Amount of capital stock	$110,839,100.00
Number of shares	1,108,391
Amount of each share	100.00

2nd.

The amount of capital stock paid up	All paid up.

3rd.

The market value of such stock, or if no market value then the true value of the shares of stock:

Market value—Understood that none has been quoted on the market for about two years. Or true value .....

122

4th.

The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road:

Funded debt	$156,050,900.00
Less securities and cash awaiting investment held in sinking funds	13,493,132.66
	$142,557,767.34

I, R. D. Pollard, tax agent of the Chicago, Burlington & Quincy Railroad Company's lines west of the Missouri river, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief.

R. D. POLLARD,
Tax Agent.

Suscribed in my presence and sworn to before me this 16th. day of April, 1904.

[SEAL.]

S. N. MEALIC°,
Notary Public.

(B) Statement of earnings, operating expenses, and taxes on the Chicago, Burlington & Quincy Railway Company's lines in Nebraska for the year ending June 30th, 1903.

Gross earnings	$15,562,600.81
Operating expenses	8,290,615.69
	$7,271,985.12
Taxes paid	500,063.88
Net earnings	$6,771,921.24

STATE OF NEBRASKA, *County of Douglas, ss:*

I, W. P. Durkee, auditor of the above named railway do solemnly swear that the above statement is true and correct to the best of my knowledge and belief.

W. P. DURKEE, *Auditor.*

123 Subscribed in my presence and sworn to before me this 16th day of April, A. D. 1904.

[SEAL.] S. N. MEALIO, *Notary Public.*

(C) Statement of earnings, operating expenses, and taxes on the Chicago, Burlington & Quincy Railway Company's lines, known as the Burlington & Missouri River Railroad in Nebraska, for the year ending June 30, 1903.

Gross earnings	$21,957,676.42
Operating expenses	12,576,345.10
	$9,381,331.32
Taxes paid	747,182.18
Net earnings	$8,634,149.14

STATE OF NEBRASKA, *County of Douglas, ss:*

I, W. P. Durkee, auditor of the above named railway, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief.

W. P. DURKEE, *Auditor.*

Subscribed and sworn to before me this 25th day of May, A. D. 1904.

[SEAL.] S. N. MEALIO, *Notary Public.*

IX.

Defendants answering paragraph nine of said bill of complaint severally say that on or before April 1, 1904, agreeable to law,

said complainant made and filed with each county clerk of
124 each county in the state of Nebraska through which the roads extend, a report in writing and duly verified showing the mileage of said complainant in the several subdivisions of the state and also showing the machine and repair shops, general office buildings, store houses and all real and personal property of complainant in each of said counties not within or upon its right of way and which properties were assessable locally and over which the said state board had no jurisdiction for assessment purposes, and which said state board did not in any way undertake to assess.

The value of said property locally assessed was about $500,000.

X.

Defendants answering paragraph ten of said bill of complaint respectively say that complainant furnished said state board with a statement as to its holdings of property outside of the state which it claimed had no connection with their property in said state and was of the value of $39,000,000, as set out in said paragraph ten. But said defendants deny that said property had so large a value and deny that it had no connection with complainant's property in said state, and deny that it was assessed in other states; but allege the truth to be that said properties were a part of the system known as the Chicago, Burlington and Quincy Railway Company; and allege that in consideration of all the evidence, facts and circumstances presented the said state board allowed the deduction asked for by said complainant on account of said properties held by complainant outside of the state of Nebraska and at no time attempted to assess or did assess the value of said property, but on the contrary said board undertook to assess and did assess alone the property of said
125 complainant in the state of Nebraska; deny that the value of complainant's property in said state of Nebraska is only $25,000 per mile; but allege the truth to be that said property in said state has an average value of at least $40,000 per mile.

XI.

Defendants answering paragraph eleven of said bill of complaint respectively admit that the several lines of railroad of the complainant company extending in the several states differ in respect to physical condition, character, cost of construction, equipment, train service and traffic and earnings, as set out with particularity in said paragraph eleven of the bill of complaint; but allege the fact to be that the value of said railroad property in said state of Nebraska, as determined by the said state board of equalization and assessment was properly and justly found to be at least the sum of $101,184,996.75.

XII.

Defendants answering paragraph twelve of said bill of complaint respectively say that they have no knowledge of the value of complainant's properties in other states as alleged in paragraph twelve,

and therefore deny the allegations therein contained; deny that said state board of equalization and assessment at its meeting in 1904 unlawfully, wrongfully, and [illegible]iently and through a mistake of fact ascertained the value of the stocks and bonds issued by complainant and outstanding and divided the sum by the total mileage of complainant and assigned its portion thereof to Nebraska on the mileage basis, without taking into consideration the value of complainant's properties as alleged in said paragraph twelve.

126 XIII.

Defendants answering paragraph thirteen of said bill of complaint respectively say that the said state board had a right under the law to consider the value of the stocks and bonds and the net earnings of complainant in determining its value in the state of Nebraska, and deny that a consideration of said matters by the said state board would violate the uniformity clause of the constitution of the state or would result in injustice to complainant or to the imposition on it of an undue burden of government.

XIV.

Defendants answering paragraph fourteen of said bill of complaint respectively say that complainant and the said Illinois corporation have an authorized capital stock of $100,000,000; that said stock had a value on the first day of April, 1904, and at the time said state board fixed its value of at least $200,000,000; that the total bonded debt of complainant and of the said Illinois company at said time was $156,050,900, par value; admit that complainant through its officers and agents did not know and did not inform the said state board what the value of said capital stock and bonds was at the time the value of complainant's property in Nebraska for the year 1904 was determined by said board; deny that the value of said stocks and bonds did not exceed the sum of $278,000,000, but allege the fact to be that it exceeded the sum of $356,050,900; deny that complainant's property could be reproduced in Nebraska at an average cost of $25,000 per mile; admit that the stock market of the stocks and bonds of complainant as described in said paragraph fluctuated at different times during the year 1901, but deny that said stocks and bonds
127 did not have a market value subsequent to said year; and allege the fact to be that during the spring of 1904 and on the 30th day of March of said year said stocks were quoted on the market as follows: "$180 bid; $200 asked."

Said defendants further answering said paragraph allege the fact to be that said capital stock was worth on the day the value of complainant's property was fixed by said board at least $200 per share, that is to say, it was worth above par one hundred per cent.

XV.

Defendants answering paragraph fifteen of said bill of complaint respectively say that the aggregate assessment roll of property in the

state of Nebraska for the year 1903 was $188,458,379, of which $27,284,946 was railroad property, exclusive of railroad property assessed locally in said state. Deny that railroad property for said year was assessed at approximately one-sixth of its full value and that other property was assessed at from one-seventh to one-twentieth of its full value; deny that in 1904 millions of dollars' worth of property escaped taxation and that the assessors of the several counties had different standards by which they measured the value of property; admit that in 1904 an attempt was made by the several assessors and equalization boards of the state to obtain a fair and equitable assessment; and deny that said assessors and equalization boards failed in said attempt; admit that there was a great deal of discussion in public and in the newspapers concerning the operation, merits and demerits of the revenue law in force in said year; deny that a majority of said state board of equalization and assessment were candidates for
128 re-election to office, or that the agitation and discussion mentioned influenced them in any way in their judgment in fixing the value of complainant's property for assessment; deny that the individual members of said state board assumed that the total assessment of all taxable property in the state would be approximately the sum of $400,000,000, or that said members individually arranged and agreed among themselves, in advance of the final hearing and submission before the said board, and without regard to the facts and circumstances presented, that they would, pretending to act as a state board of equalization and assessment, add approximately $19,000,000, or any other sum to the value of the railroad properties in said state, over the value of the year previous, and that they would thus assess them at $46,177,563; or that they would add the sum of $8,976,-209.50 to the assessment of complainant's property of the year previous, and assess the same at $20,235,186 for taxation in 1904; deny that the said board arbitrarily increased the taxes of complainant over the year previous; deny that said state board in valuing and assessing the property of complainant recognized and knew that an assessment of $20,235,186 thereon would require a valuation of approximately $38,000 per mile of said road in said state, regardless of its actual value, or that with such knowledge and in pursuance of the agreement and conspiracy alleged, they adopted and used the unit plan in assessing complainant's property as a device; deny that said state board took into account only the stocks and bonds issued by the Iowa and Illinois corporation; deny that the value of said stocks and bonds did not exceed $278,000,000; deny that the 8,112.77 miles of complainant's railroad were of a value not exceeding $225,-
129 000,000; deny that said state board gave no consideration whatever to the facts and circumstances presented to said board, or fixed and determined the value of complainant's property in said state in pursuance to any understanding or agreement between themselves to value said property regardless of the evidence, facts and circumstances presented to them. But said defendants allege the fact to be that said state board and the members thereof, acted in good faith and in strict performance of their duties and powers as the state board of equalization and assessment and that said board fixed the

actual value of complainant's said property, not alone by the test of the value of its stocks and bonds, or alone by the test of the capitalization of its net earnings, but that it determined the value of said complainant's property in said state of Nebraska for the year 1904 for taxation, after a full and fair investigation of the returns made as aforesaid by the said complainant railroad company respecting its property, and after a full and fair consideration of all the evidence so furnished and of all other evidence received by said state board of equalization and assessment on the subject, and after giving said complainant railroad company all the deductions asked by it on account of its assets real and personal outside of the state of Nebraska, and after considering the capital stock and bonded indebtedness of said company, together with its earnings, gross and net, in the state of Nebraska, and after hearing the arguments of the agents and officers of said company at great length and in great detail on the value of the property of said complainant in said state of Nebraska, and after a full and patient hearing of arguments made by eminent counsel for the complainant in behalf of a low valuation of its
130 property in said state for assessment purposes, ascertained, fixed and determined the value of the railroad property of complainant in the state of Nebraska, not locally assessed, to be $101,184,996.75.

Said defendants further answering said paragraph fifteen of the bill of complaint, each for himself alleges that in fixing the value of complainant's property in the state of Nebraska at the said sum of $101,184,996.75, the said state board of equalization and assessment acted in good faith and within their jurisdiction. That their said judgment fixing the value of complainant's property at the sum named is a just and honest finding by said board and was the result of a painstaking and careful investigation of all the facts and evidence before them admitted and discussed in the presence of the representatives and agents of the complainant company; deny that said judgment of said state board deprived complainant of any of its rights guaranteed by the constitution of the United States of America.

XVI.

Defendants answering paragraph sixteen of said bill of complaint respectively deny that the valuation by said board as hereinbefore described was arbitrary, reckless, unreasonable or was made without the exercise of any judgment on the part of said board, or as the result of mere will, or because of public clamor, or through fear and coercion produced by any cause, or in disregard of their duties under the law, or that because of any influence whatever said board did not in fact find the value of complainant's property in Nebraska, or that said board without proof and in contradiction of the evidence before it, arbitrarily, fraudulently, and illegally increased the assessed valuation of complainant's property over the previous year in ex-
131 cess of its actual value; deny that said board knowingly, illegally, and fraudulently and in disregard of the law and the rights of complainant, pretended to fix or did fix a value upon all of the railroads in said state in one aggregate sum; but allege the fact

to be that said board attempted to fix and did fix the value of each road in the state of Nebraska separately, and independent of the value of any other road in said state; and that when such value had been determined said board then proceeded to distribute the value of such railroad over its mileage in the said state as in the judgment of said board was right and just.

XVII.

Defendants answering paragraph seventeen of said bill of complaint, each for himself denies that real estate in the state of Nebraska was valued and assessed at anything less than its actual value by the assessors in the year 1904; denies that moneys and credits in said state were assessed at anything below their actual value for said year, or that live stock was assessed any below its actual value for said year, or that merchandise in said state was assessed below its actual value for said year, or that agricultural implements were assessed below their actual value for said year, or that large amounts of personal property were wantonly overlooked by the assessors and failed to be assessed for such year. But said defendants each for himself alleges the truth to be that all property in the state of Nebraska was assessed for the year 1904 fairly and honestly and at its actual value as in the judgment of the several assessors and county boards of equalization and said state board said values were determined, and allege
132 the further fact to be true that the several county assessors and county boards of equalization throughout the state and said state board acted in good faith in fixing the value of property, real and personal, for taxation for said year, and were without intent to in any way violate the law and without any agreement or understanding or plan or rule or custom or concerted action or intention to undervalue said property.

XVIII.

Defendants answering paragraph eighteen of said bill of complaint respectively deny that the value of complainant's property in the state of Nebraska over which said state board of equalization and assessment had jurisdiction has no greater value than $63,204,313; deny that the portion of complainant's property in said state known as the Atchison and Nebraska Railroad of 108.04 miles has no greater value than $6,840 per mile; deny that of complainant's property the line known as the Burlington and Missouri River Railroad of 191.61 miles has no greater value than $12,600 per mile; deny that of complainant's property in said state known as the Chicago, Nebraska and Kansas Railroad of 5.28 miles has no greater value than $4,320 per mile, or that the line known as the Grand Island and Wyoming Central Railroad of 352.44 miles has no greater value than $4,440 per mile, or that the line known as the Kansas City and Omaha Railroad of 193.08 miles has no greater value than $3,840 per mile, or that the line known as the Lincoln and Black Hills Railroad of 176.61 miles has no greater value than $3,140 per mile, or that the line known as the Lincoln and Northwestern Railroad of 73.49 miles has no greater value than $4,200 per mile, or the line known as the Nebraska Rail-

way of 136.74 miles has no greater value than $5,520 per
133 mile, or the line known as the Nebraska and Colorado Railroad of 439.71 miles has no greater value than $3,900 per mile, or the line known as the Nebraska, Wyoming and Western Railroad of 149.79 miles has no greater value than $3,000 per mile, or the line known as the Omaha and North Platte Railroad of 81.91 miles has no greater value than $6,000 per mile, or the line known as the Omaha and Southwestern Railroad of 51.79 miles, has no greater value than $7,800 per mile, or the line known as the Oxford and Kansas Railroad of 59.61 miles has no greater value than $3,840 per mile, or the line known as the Republican Valley and Wyoming Railroad of 49.17 miles has no greater value than $3,600 per mile, or the line known as the Republican Valley, Kansas and Southwestern Railroad of 8.50 miles has no greater value than $3,700 per mile, or the line known as the Republican Valley Railroad of 552.18 miles has no greater value than $5,400 per mile.

But said defendants allege the fact to be that said state board acting legally, lawfully, free from coercion and fear, within its jurisdiction and in good faith, and in compliance with the law, found and determined that the actual value of all of said railroad properties in the state of Nebraska above described belonging to complainant was the sum of $101,184,996.75, and further allege the fact to be that said properties in said state were actually worth a much larger sum than said $101,184,996.75, and deny that said properties were only worth $68,204,313 as alleged by complainant in said paragraph.

XIX.

Defendants further answering paragraph nineteen of said bill
134 of complaint admit that in accordance with the provisions of law the state board of equalization and assessment assembled in the month of July, 1904, for the purpose of equalizing the assessments of all property in the state of Nebraska and that during said session of said board the complainant appeared before said board and complained on account of the assessments made by the county assessors and the county boards of equalization in other counties of the state, alleging that in said counties property other than railroad property had been assessed below its actual value and that much property had escaped taxation; and admit that said board had said protest and complaint of the complainant before it for consideration when engaged in equalizing the assessments of property in the several counties of the state; deny that said state board refused to correct the inequalities or equalize the assessments where in its judgment they required correction and equalization; but allege the fact to be that said board did correct all inequalities existing between the several counties and equalized the valuation of property as made by the several assessors in the several counties as in the judgment of said board appeared just and right; and that in so equalizing and correcting whatever inequalities were found to exist, said state board raised the aggregate valuation made by the local assessors and county boards of equalization in twenty-four counties of the state and reduced the assessments made by the local assessors and the county boards of

equalization in no county of the state; that said board found at the meeting aforesaid that in all but twenty-four counties of the state all property other than railroad property had been assessed at its full actual value by the local assessors and county boards of
135 equalization, and that the property in the twenty-four counties had been undervalued by the assessors and county boards of equalization; and for the purpose of correcting the assessment in the said twenty-four counties so as to make it conform to law, all valuations of properties by the assessors within said counties were increased by a percentum of from five to ten per cent., thereby increasing the aggregate assessment roll of the state several million dollars.

XX.

Defendants answering paragraph twenty of said bill of complaint respectively deny that said assessment by said state board was illegal, excessive, unlawful, fraudulent, null and void and without jurisdiction; deny that said board in fixing said assessment included values and properties belonging to complainant outside of the state of Nebraska; but allege the fact to be that said board attempted to fix and did fix the value of complainant's property in the state alone, and deny that if said assessment is allowed to stand that it will result in double taxation of complainant's property.

XXI.

Defendants answering paragraph twenty-one of said bill of complaint respectively deny that the assessment by the state board of complainant's property was illegal, excessive, unlawful, fraudulent, null and void and without jurisdiction; admit that it was the duty of the several assessors and equalization boards of the state to assess all other property in the state at its actual value, and deny that such other property was by such assessors and equalization boards assessed below its actual value; and deny that complainant's property
136 was valued by said boards in excess of the relative value of other property in the state; deny that one standard of value was used by the state board and another and a different standard of value was used by the administrative boards and assessors throughout the state in ascertaining the value of property other than railroad property.

XXII.

Defendants answering paragraph twenty-two of complainant's said bill of complaint, each for himself denies that said assessment and valuation of complainant's property by said state board was illegal, unlawful, excessive, fraudulent, null and void and without jurisdiction on account of the value of the franchise of said complainant being taken into consideration by said state board; denies that said franchise is exempt from taxation under the laws of the state of Nebraska.

XXIII.

Defendants answering paragraph twenty-three of complainant's said bill of complaint, each for himself denies that the assessment and valuation of complainant's property by said state board was illegal, unlawful, excessive, fraudulent, null and void and without jurisdiction, in that the said state board considered the earnings of said complainant's property upon business which had neither origin nor destination within the state of Nebraska, and a supposed value of said complainant's interstate business; denies that it refused to consider only the value of complainant's business which had origin and destination within the state of Nebraska, but alleges the fact to be that said state board in estimating the value of complainant's property in the state of Nebraska considered the earnings
137 of said company earned by said company in its business and operation of its property in the state of Nebraska as one of the factors going to make up the value of said property in the state of Nebraska.

XXIV.

Defendants answering paragraph twenty-four of complainant's said bill of complaint, each for himself denies that the assessment and valuation of complainant's property by said state board was illegal, unlawful, excessive, fraudulent, null and void and without jurisdiction; denies that if said judgment of said board is carried into effect that it will result in compelling complainant to bear an undue, unlawful and excessive proportion of the burden of government, or will result in largely increasing the taxes of complainant; denies that the taxes of the complainant by the judgment of said board will be increased largely over the year 1903; but alleges the fact to be that the execution and enforcement of the judgment of said state board of equalization and assessment will result in its paying a much less tax than it did in the year 1903 in several of the counties through which said railroad runs.

XXV.

Defendants answering paragraph twenty-five of complainant's said bill of complaint, each for himself denies that the assessment and valuation of complainant's property by said state board was illegal, unlawful, excessive, fraudulent, null and void and without jurisdiction; denies that said assessment and valuation was arbitrary, reckless and grossly unreasonable; denies that if enforced, said assessment and valuation will compel the complainant to pay at
138 least 35 per cent. more than its fair proportion of the tax and burden of government.

XXVI.

Defendants answering paragraph twenty-six of complainant's said bill of complaint, each for himself denies that the doings and proceedings of said state board of equalization and assessment were

null and void and without jurisdiction, or were illegal, wrongful, unlawful and fraudulent, or were in direct violation of the statutes of the state of Nebraska, or in violation of the constitution of the United States of America, or in violation of the constitution of the state of Nebraska; denies that if the said judgment of said state board is not enjoined that the complainant will be deprived of its property without due process of law, or will be deprived of the equal protection of the laws.

XXVII.

Defendants answering paragraph twenty-seven of complainant's said bill of complaint, each for himself denies that each and every and all of the said acts, doings and proceedings of said state board of equalization and assessment as set out in the preceding paragraph of complainant's bill of complaint, are arbitrary, reckless, excessive, fraudulent, unlawful, illegal, unconstitutional, null and void and without jurisdiction or authority of law; denies that said judgment of said board puts a cloud upon the title of complainant's property, or creates a lien thereon; denies that unless said judgment of said state board is enjoined that it would result in a multiplicity of suits; denies that complainant would suffer great and irreparable loss and injury or that it is without a sufficient and adequate remedy at law.

139

XXVIII.

Defendants answering paragraph twenty-eight of complainant's said bill of complaint, each for himself admits that in pursuance of law said state board of equalization and assessment certified its valuation of complainant's property to the county clerks of each and all of the following named counties in the state of Nebraska as shown in Exhibit B of said Bill of Complaint.

XXIX.

Defendants answering paragraph twenty-nine of complainant's said bill of complaint, each for himself admits that the said several county clerks of the said counties named in the preceding paragraph, in compliance with law entered upon all of the tax books, tax records and tax warrants of the said several counties, the said valuation and the said assessed value of complainant's property in each of the said several counties as so certified to them by the said state board of equalization and assessment, and extended upon the said several tax books and tax warrants the respective levies required by law to be made and entered in said several counties.

XXX.

Defendants answering paragraph thirty of said bill of complaint, severally deny that said state board should not have found and determined the valuation per mile of complainant's said several lines of railroad in Nebraska to have been in any sum in excess of the amounts specified by complainant in said paragraph thirty.

XXXI.

140 Defendants answering paragraph thirty-one of said bill of complaint, severally deny that each and all the said acts, doings and proceedings of the said state board of equalization and assessment, in respect of the valuation and assessment of complainant's said properties, were arbitrary, fraudulent, unlawful and in violation of the rights of complainant under the federal and state constitutions; deny that said acts and doings were without jurisdiction and authority of law, or were or are wholly void, wrongful, unlawful, or in violation of the statutory and constitutional rights belonging to complainant; deny that said acts or doings or proceedings by said state board cast a cloud upon the title of complainant's property in any character whatever; deny that unless the judgment of said board shall be enjoined that the complainant will be deprived of its property without due process of law, or that it will be denied the equal protection of the law under the constitution of the state of Nebraska and the constitution of the United States of America; deny that the entry and extension upon the respective tax lists and tax warrants of the several counties of this state of the said valuation and assessment of complainant's property by the said state board, were made without jurisdiction and without authority of law, and deny that the enforcement of the collection of said taxes so assessed and certified will deprive complainant of its property without due process of law, or will deny to it the equal protection of the law, or will prevent it from enjoying the same measure of right which is guaranteed to other citizens and taxpayers of the state in respect to the valuation and assessment of their properties.

XXXII.

141 Defendants answering paragraph thirty-two of complainant's said bill of complaint, each for himself admits that the several county boards of equalization of the state in pursuance of law made their levies for county purposes in their respective counties, and that the several school districts, road districts, towns, villages and cities in the said several counties, in pursuance of law made and certified to the county clerks of their respective counties, the several levies required to be made on behalf of said municipalities; admits that the said state board of equalization and assessment, made and passed an order fixing the levy for state purposes required to be made and extended upon the assessment rolls and tax lists of each of the counties in the state at six mills on the dollar valuation, and caused the said levy to be certified to the several county clerks; admits that each and all of the said levies above mentioned were entered upon the assessment rolls and extended upon the tax lists and are not included in the tax warrants of the respective counties.

Said defendants further answering said paragraph, each for himself admits that the amount of taxes for all purposes assessed and levied against complainant's property of the said several respective

counties, the treasurers of which are defendants herein, is correctly shown by Exhibit C of said bill of complaint.

But said defendants deny that of said amount of taxes so extended against the properties of complainant $216,809.53 is excessive, extortionate, illegal, unlawful, or made and levied without jurisdiction.

XXXIII.

Defendants further answering said paragraph thirty-three of complainant's said bill of complaint, each for himself admits
142 that the county treasurer of each of the said counties in said state of Nebraska has received the tax warrant requiring him to collect from the complainant the taxes set forth in complainant's bill of complaint and specifically set out in the foregoing paragraph of this answer.

XXXIV.

Defendants further answering said paragraph thirty-four of complainant's said bill of complaint, each for himself admits that each of said defendants is charged by law with the duty of collecting the taxes aforesaid from complainant; denies that the collection of said tax will bring upon complainant great and irreparable loss, damage and injury and denies that complainant is without sufficient and adequate remedy at law.

XXXV.

Defendants further answering paragraphs thirty-five, thirty-six and thirty-seven of complainant's said bill of complaint, each for himself admits that the complainant made a tender and offer to the said several county treasurers, defendants herein, — the sums of money in payment of their taxes admitted by it to be due in the several counties, as itemized by Exhibit B of said bill of complaint.

XXXVI.

Said defendants answering paragraph thirty-eight of said bill of complaint, severally deny the allegation charging that section 10,560 of Cobbey's Compiled Statutes of the state of Nebraska for 1903 is unconstitutional and void for any reason whatever.

Wherefore, these defendants having fully answered, con-
143 fessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to their best knowledge and belief, humbly pray this honorable court to enter its decree that these defendants respectively be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

NORRIS BROWN,
Attorney General of the State of Nebraska,
Solicitor for Answering Defendants.

Endorsed: Filed Apr. 3 1905 Geo. H. Thummel, Clerk.

144 Thereupon afterwards, to-wit: On the 13th day of April, 1905, exceptions of the complainant to the answer of defendants to the bill of complaint as amended *was* filed in said case, which said exceptions are in the words and figures following, to-wit:

United States Circuit Court, District of Nebraska.

Doc. W., No. 80.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
v.
F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Defendants.

Exceptions of the Complainant to the Answer of Defendants to the Bill of Complaint as Amended.

Comes now the complainant and excepts to the answer of the defendants to the bill of complainant, as amended, for the following reasons, to-wit:

Exception I.

In the 15th paragraph of the bill of complaint, as amended, complainant alleges:

"Your orator further avers that in valuing and assessing its properties subject to the jurisdiction of the Board, the members thereof recognized and knew that an assessment of $20,235,186 thereon would require a valuation of approximately $38,000.00 per mile for each and every mile of its road in the state, regardless of its actual value, and with this knowledge, and pursuant to the understanding and agreement aforesaid, they adopted and used the unit plan described in the act defining the powers and duties of the State Board of Equalization and Assessment as a device to work out these
145 valuations and assessments, and thereupon, pretending to act as such Board, and in pretended compliance with the provisions of the act aforesaid, they took into account only the stocks and bonds issued by the Iowa and Illinois corporations, which are based upon and represent your orator's entire property and interest, and designedly and arbitrarily fixed the value thereof at $314,378,750, and designedly and arbitrarily applied it to the 8,112.77 miles of railroad so as aforesaid returned by your orator to the State Board in compliance with the act aforesaid. And your orator further avers that these stocks and bonds were not of the value of $314,378,750, but were of a value not exceeding $278,000,000; and that the 8,112.77 miles of railroad were not of the value of $314,378,750, but were of a value not exceeding $225,000,000."

That part of defendants' answer purporting to be addressed to said allegations of the bill of complaint, as amended, is as follows:

"Defendants answering paragraph fifteen of said bill of complaint * * * deny that said State Board in valuing and assess-

ing the property of complainant recognized and knew that an assessment of $20,235,186 thereon would require a valuation of approximately $38,000 per mile of said road in said state, regardless of its actual value, or that with such knowledge and in pursuance of the agreement and conspiracy alleged, they adopted and used the unit plan in assessing complainant's property as a device; deny that said state board took into account only the stocks and bonds issued by the Iowa and Illinois corporation; deny that the value of said stocks and bonds did not exceed $278,000,000; deny that the 8,112.77
146 miles of complainant's railroad were of a value not exceeding $225,000,000."

Complainant excepts to said answer to the aforesaid allegation of the bill of complaint for the reason that it is uncertain, imperfect, evasive and insufficient in the following particulars, to-wit:

1. That it does not answer, admit or deny the charge contained in said allegation of the bill of complaint that the members of the State Board of Equalization and Assessment designedly and arbitrarily fixed the value of the stocks and bonds of the Iowa and Illinois corporation at $314,378,750.

2. That it does not answer, admit or deny the charge that the members of said Board designedly and arbitrarily applied said value of $314,378,750, so placed upon said stocks and bonds, to the 8,112.77 miles of railroad of complainant.

3. That it does not answer, admit or deny the allegation that "your orator further avers that these stocks and bonds were not the value of $314,378,750.

4. That it does not answer, admit or deny the allegations that "the 8,112.77 miles of railroad were not of the value of $314,378,750."

Exception II.

In the 15th paragraph of the bill of complaint, as amended, complainant alleges as follows:

"And your orator further shows that if it shall appear, notwithstanding the evidence to the contrary, that the members of the Board acted in good faith and in the strict performance of their duties and function as the State Board of Equalization and Assessment, and that they did fix the actual or market value of its stocks and bonds upon consideration of the facts and circumstances presented, and
147 thereupon applied the value so fixed to the total mileage of your orator's road in the several states, and made the computations prescribed in the act defining its powers and duties, and declared the result of the computations to be the valuation and assessment respectively of each mile of road to be assessed, and reported the same to the clerks of the several counties, as required by law, nevertheless, your orator submits that owing to the location, circumstance and conditions of its road and properties in the several states, and the manner in which the computation was made, as aforesaid, the necessary result of such process and proceeding was to increase the value of its roads in the state of Nebraska by adding thereto a very considerable amount of the value of its roads and properties in the other states, and thereby to import into Nebraska for the purposes of taxation its property located in other states."

That part of defendants' answer purporting to be addressed to said allegation of the bill of complaint, as amended, is as follows:

"But said defendants allege the fact to be that said state board and the members thereof, acted in good faith and in strict performance of their duties and powers as the state board of equalization and assessment and that said board fixed the actual value of complainant's said property, not alone by the test of the value of its stocks and bonds, or alone by the test of the capitalization of its net earnings, but that it determined the value of said complainant's property in said state of Nebraska for the year 1904 for taxation, after full and fair investigation of the returns made as aforesaid by the said complainant railroad company respecting its property, and after a full and fair consideration of all the evidence so furnished and of all other evidence
148 received by said state board of equalization and assessment on the subject, and after giving said complainant railroad company all the deductions asked by it on account of its assets, real and personal, outside of the state of Nebraska, and after considering the capital stock and bonded indebtedness of said company together with its earnings, gross and net, in the state of Nebraska, and after hearing the arguments of the agents and officers of said company at great length and in great detail on the value of the property of said complainant in said state of Nebraska, and after a full and patient hearing of arguments made by eminent counsel for the complainant in behalf of a low valuation of its property in said state for assessment purposes, ascertained, fixed and determined the value of the railroad property of complainant in the state of Nebraska, not locally assessed, to be $101,184,996.75."

Complainant excepts to said answer to the aforesaid allegation of the bill of complaint for the reason that it is uncertain, imperfect, evasive and insufficient in the following particulars, to-wit:

That it does not answer, admit or deny the charge contained in said allegation of the bill of complaint that:

"Owing to the location, circumstance and conditions of its road and properties in the several states and the manner in which the computation was made, as aforesaid, the necessary result of such process and proceeding was to increase the value of its road in the state of Nebraska by adding thereto a very considerable amount of the value of its roads and properties in other states, and thereby to import into Nebraska for the purposes of taxation its property located in other states."

149 Wherefore the complainant comes and in all particulars aforesaid excepts to the answer of the said defendants on the grounds alleged that the same is uncertain, imperfect, evasive and insufficient; and humbly prays that the said defendants may be compelled to put a full, complete and sufficient answer thereto; and for such other relief in the premises as to the court may seem proper.

JAMES E. KELBY AND
GREENE, BRECKENRIDGE & KINSLER,
Solicitors for Complainant.
CHARLES J. GREENE, *Of Counsel.*

Endorsed: Filed Apr. 13 1905 Geo. H. Thummel, Clerk.

150 Thereupon afterwards, to-wit:—At the May 1905 Term of said Court and on the 1st day of May, 1905, the following proceedings were had and done in said case as appear of record in Journal No. "4" of said Court, to-wit:—

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
vs.
F. C. BABCOCK ET AL.

This cause coming on to be heard on the exceptions of the plaintiff to the answer of Defendants, the same is fully argued by the attorneys for the respective parties, duly submitted and by the Court taken under advisement.

151 Thereupon afterwards, to-wit:—On the 3rd day of May, 1905, memorandum opinion was filed in said case, which said Memorandum opinion is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

No. 80, W.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
v.
F. C. BABCOCK, Treasurer, ET AL., Respondents.

Memorandum Opinion.

MUNGER, *D. J.:*

This is heard on exceptions to the answer. The first exception is to the effect that the answer does not admit or deny the charge contained in the bill of complaint that the members of the State Board of Equalization and Assessment designedly and arbitrarily fixed the values of the stocks and bonds of the Iowa and Illinois corporations at $314,378,750.

While this allegation is not specifically denied or admitted in the portion of the answer set forth in the exceptions as applying thereto, yet the portion of the answer set forth in the second exception I think is an answer. It specifies just how they arrived at the valuation, which shows that it was not done designedly and arbitrarily, and the first exception will be overruled.

The second exception is based upon the fact that the answer does not sufficiently meet that portion of the bill which says:

152 "Owing to the location, circumstance and conditions of its road and properties in the several states and the manner in which the computation was made, as aforesaid, the necessary result of such process and proceeding was to increase the value of its road in the State of Nebraska by adding thereto a very considerable amount of the value of its roads and properties in other states, and thereby to import into Nebraska for the purposes of taxation its property located in other states."

This allegation of the bill is merely a deduction drawn from the fact that the valuation of the portions of the road in other states than Nebraska exceeds in actual value, so far as tangible property is concerned, the value in Nebraska, and that by taking the total valuation of the entire system and dividing it by the mileage and distributing that mileage, therefore, the value of the mileage in Nebraska is increased.

It is true that in all equity pleading the answer should respond specifically to every material allegation. It is permissible in equity pleading to allege conclusions of law, and this is frequently done; but I do not understand that it is necessary for defendant in his answer to admit or to deny the correctness of a proposition of law. Even if a proposition of law asserted in a bill of complaint be admitted to be correct, it would not be binding upon the Court. The Court will pronounce the law as it understands it without reference to any agreement or admission of counsel with respect thereof. The same, I think, is true with regard to the deduction in this case from the evidence that if the mileage valuation was based upon the entire system, therefore, the value in Nebraska would be increased above what it would be if the system was not treated as an entirety. I do not regard that as a material allegation of fact in the bill. That is more in the nature of an argument, and not to be determined by the Court in determining whether or not under the facts in the case
153 what is known as the unit system may be properly applied for the purposes of assessment in Nebraska.

The exceptions to the answer are overruled and leave given to complainant to file replication within 8 days.

Endorsed: Filed May 3, 1905, Geo. H. Thummel, Clerk.

153½ Thereupon afterwards, to wit:—At the May, 1905, Term of said Court and on the 3rd day of May, 1905, the following proceedings were had and done in said case as appear of record in Journal No. 4 of said Court, to wit:—

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
F. C. BABCOCK ET AL.

This cause having been heretofore argued and submitted to the Court on the exceptions to the Answer, now after due consideration thereof, and being fully advised concerning the same, it is by the Court

Ordered, that the exceptions to the answer be and the same hereby are overruled, and leave is given to complainant to file replication herein within eight days.

154 Thereupon afterwards, to-wit: On the 6th day of May, 1905, a Replication was filed in said case, which said Replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

No. 80, Doc. W.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY
v.
F. C. BABCOCK, Treasurer of Adams County, Nebraska, *et al.*

The Replication of Chicago, Burlington and Quincy Railway Company, Plaintiff, to the Answer of F. C. Babcock, as Treasurer of Adams County, Nebraska, *et al.*, defendants.

The replicant, saving and reserving to itself, all and all manner of advantages of exceptions which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer, of the defendants, for replication thereunto, say- that it does and will aver, maintain and prove the said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendant- is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct,
155 and humbly pray as in and by its said bill it has already prayed.

C. J. GREEN,
J. E. KELBY,
C. F. MANDERSON,
Solicitors for Complainant.

Endorsed: Filed May 6, 1905. Geo. H. Thummel, Clerk.

156 Thereupon afterwards, to-wit: On the 14th day of December, 1905, a Motion to Dissolve Injunction as to State Taxes for 1904 was filed in said case, which said Motion is in the words and figures following, to wit:

In the Circuit Court of the United States Within and for the District of Nebraska.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Defendants.

Motion to Dissolve Temporary Injunction as to State Taxes for 1904.

Come now F. C. Babcock, as Treasurer of Adams County, Nebraska, Carles W. Brennan, as Treasurer of Box Butte County, Nebraska, J. C. Perry, as Trasurer of Butler County, Nebraska, William D. Wheeler, as Treasurer of Cass County, Nebraska, A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska, F. T. Swanson, as Treasurer of Clay County, Nebraska, W. A. George, as Treasurer of Custer County, Nebraska, W. T. Wilson, as Treasurer of Dawes County, Nebraska, C. C. Barr, as Treasurer of Dundy County, Nebraska, E. J. Dempster, as Treasurer of Fillmore County, Nebraska, C. C. Brown, as Treasurer of Franklin County, Nebraska, E. P. Pyle, as Treasurer of Frontier County, Nebraska, B. F. Moore, as Treasurer of Furnas County, Nebraska, W. W. Wright, as Treasurer of Gage County, Nebraska, C. T. Weeks, as Treasurer of Greeley County, Nebraska, J. B. Cunningham, as Treasurer of Hamilton County, Nebraska, J. P. Wertz, as Treasurer of Hitchcock County, Nebraska, F. S. Albright, as Treasurer of Hooker County, Nebraska, C. E. Taylor, as Treasurer of Howard County, Nebraska, S. R. Merrell, as Treasurer of Jefferson County, Nebraska, William W. Wheatley, as
157 Treasurer of Johnson County, Nebraska, Rollin Orcutt, as Treasurer of Kearney County, Nebraska, Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska, E. S. Davis, as Treasurer of Lincoln County, Nebraska, D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska, C. C. Dudley, as Treasurer of Nuckolls County, Nebraska, R. W. Kelly, as Treasurer of Otoe County, Nebraska, O. H. Loch, as Treasurer of Pawnee County, Nebraska, C. L. Grandlund, as Treasurer of Phelps County, Nebraska, E. H. Sexson, as Treasurer of Perkins County, Nebraska, B. G. Gossard, as Treasurer of Red Willow County, Nebraska, Martin Zook, as Treasurer of Richardson County, Nebraska, C. E. Bowlby, as Treasurer of Saline County, Nebraska, J. A. Brown, as Treasurer of Harlan County, Nebraska, Oscar Hanson, as Treasurer of Saunders County, Nebraska, Thomas Preston, as Treasurer of Scott's Bluff County, Nebraska, L. F. Schultz, as Treasurer of Seward County, Nebraska, Lee Fritz, as Treasurer of Sheridan County, Nebraska, S. N. Sweetland, as Treasurer of Sherman County, Nebraska, J. A. Bothwell, as Treasurer of Thayer County, Nebraska, Chris Fritz, as Treasurer of Thomas County, Nebraska, G. R. McCreary, as Treasurer of Webster County, Nebraska, R. Henderson, as Treasurer of York County, Nebraska, defendants, and show to the court:

1. It appears upon the face of complainant's bill, under paragraph 33 on page 58, and elsewhere throughout said bill, that six mills on the dollar of the taxes assessed and levied against complainant are taxes belonging to the state of Nebraska, and that these defendants have warrants requiring them to collect such taxes for the State of Nebraska.

2. It is shown upon the face of complainant's bill that a portion of the taxes against which complainant seeks relief by injunction are taxes on the state of Nebraska, one of the states of the
158 United States of America, and that these defendants are directed by warrant to collect for the said state of Nebraska its said portion of the state taxes.

3. It is shown upon the face of complainant's bill that these defendants are agents of the state of Nebraska, duly authorized by warrant to collect for it its taxes and pay them into the state treasury.

4. It is shown by the records in this cause that this Honora- Court on application of said complainant has granted a temporary injunction by which these defendants are restrained from collecting and paying over to the treasurer of the state of Nebraska the portion of the taxes belonging to the state of Nebraska, one of the states of the United States of America.

5. It is shown upon the face of the record in this cause that the preliminary injunction issued by this Honorable Court is issued in a cause which is in effect a suit against the state of Nebraska, one of the states of the United States of America.

6. By the eleventh amendment to the constitution of the United States it is provided that the judicial power of the United States shall not be construed to extend to any suit in law or equity against one of the United States by citizens of another state. It is shown upon the face of the bill that complainant is a citizen of the state of Illinois, another state. In so far as the said preliminary injunction of this Honorable Court enjoins the collection of taxes belonging to the state of Nebraska, it is a violation of said eleventh amendment to the constitution of the United States, and is without jurisdiction and void.

159 Wherefore these defendants move the court that the said preliminary order of this Honorable Court may be dissolved and held for naught in so far as it restrains defendants from collecting and paying over to the treasurer of the state of Nebraska the portion of the taxes shown upon the face of the bill to belong to the state of Nebraska, one of the states of the United States of America.

NORRIS BROWN,
Attorney General, Solicitor for Defendants.

Notice of the foregoing motion and that it will be presented December 26, 1905, at 9 o'clock A. M., or as soon thereafter as counsel for defendants can be heard, is hereby accepted on behalf of complainant.

C. J. GREENE,
Solicitor for Complainant.

Omaha, Dec. 14, 1905.

Endorsed: Filed Dec. 14 1905 Geo. H. Thummel, Clerk.

160 Thereupon afterwards, to-wit: On the 27th day of December, 1905, Vol. I of Testimony taken — behalf — Complainant was filed in said cause, which Volume I of Testimony is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

No. 80, Docket "W."

THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Respondents.

Testimony taken on behalf of the Complainant, Chicago, Burlington & Quincy Railway Company, under the sixty-seventh rule of the Supreme Court, as amended, pursuant to agreement between the parties, beginning July 11th, 1905, at 2 o'clock p. m., at Room No. 711, New York Life Building, in the City of Omaha, Douglas County, Nebraska before me, Charles W. Pearsall, an Examiner in Chancery of the United States Circuit Court for the District of Nebraska.

Present: Charles J. Greene, Esq., Solicitor for Complainant. Norris Brown, Attorney General, Solicitor for Defendants.

It is hereby stipulated and agreed that the testimony may be taken in shorthand by Charles W. Pearsall, the Examiner before whom this testimony is being taken, and by him extended into longhand.

161 EDWARD F. BROWNE, a witness on behalf of the complainant, being duly sworn, testified as follows:

Examination in chief.

By CHARLES J. GREENE, Esq.:

The defendants and each of them object to the introduction of any testimony in this cause for the reason:

1st: That the Bill of Complaint fails to state facts sufficient to constitute a cause of action against them or either of them.

2nd: That the Court is without power to grant the relief prayed, on the facts stated in the Bill of Complaint.

Q. Colonel, you will have to state approximately your age?
A. I am 62 years old or pretty near it.
Q. And what is your business?
A. My business is that of a statistician.
Q. Have you a letter head?

A. Yes, sir, I have quite a list of specialties.

Q. Does that letter head state your specialties in your line of business?

A. Yes sir.

The letter head referred to is as follows:

Railroad Statistician.	Mining and Milling.
Equalization figures furnished.	Geological figures reported.
Railroad values determined.	Economical features recommended.
New territory prospected.	Form of reduction determined.
Tonnage estimates made.	Accounts checked and investigated.

Ed. F. Browne, Statistician.

162 Q. You are frequently employed by railway companies to consider the feasibility of constructing railroads?

A. I am.

Q. What do you do in such cases?

A. This year I made an investigation for the Santa Fe railroad that took me over all of Southern Nevada and parts of California, with the idea of determining whether it would be advisable to build a railroad through the New Gold Camp at the gold fields, Nevada.

Q. What do you consider?

A. The possibility of construction, the cost of construction, and whether it is advisable to build a road, whether it would pay after it is constructed, whether the business of the company would warrant it.

The ATTORNEY GENERAL: Let's have the record show that all this testimony is taken subject to an objection.

Mr. GREENE: I would rather you would object as we go along so that I would know that portion of the testimony to which you object and the grounds of your objection.

The ATTORNEY GENERAL: Do you want me to?

Mr. GREENE: Yes, if you have an objection; but this is only to show the man's familiarity with the things I am going to ask him about; it is merely preliminary.

Q. How long have you been familiar with the railway situation of the Burlington Company in Nebraska, and its properties?

A. Three years.

163 Q. Do you know the different lines of railroad which were assessed in 1904?

A. I do.

Q. First, do you know what the capital stock, the total capital stock of the Chicago, Burlington & Quincy Railway Company of Iowa, and the Chicago, Burlington & Quincy Railroad Company of Illinois are?

A. I know it from their official reports.

Mr. GREENE: The complainant now offers in evidence the 49th annual report of the Board of Directors of the Chicago, Burlington & Quincy Railroad Company to the stockholders for the year ending June 30, 1903, as a report of the Company of its general operation (To the Attorney General) Will you accept that as a report of the general operation of the Company?

The ATTORNEY GENERAL: O, yes, as far as that is concerned.

Mr. GREENE: You may want to use it as much as I do. The report referred to is marked Exhibit "1." C. W. P.

Q. I call your attention to the Atchison & Nebraska Railroad in Nebraska. Where is that railroad please?

A. That runs from Lincoln to the River down at Rulo, and on down to the State line towards Atchison, the portion in Nebraska.

164 Q. Do you know how many miles about?

A. In Nebraska 108.04 miles.

Q. What was—what would that road be worth per mile without any right or franchise, a mere conglomerate of things, and real estate?

The ATTORNEY GENERAL: We object to that on the ground that it is immaterial, irrelevant and incompetent and no foundation laid.

Q. Are you acquainted with the value of that road, have you investigated it?

A. As a railroad, yes.

Q. What would you say its value is, without any right or franchise, just a tangible thing?

The ATTORNEY GENERAL: We object to that on the ground that it is immaterial, irrelevant and incompetent and no foundation laid.

A. Without its use as a railroad?

A. Yes, without the right to be a railroad.

A. O, $10,000 a mile would be an exceptional price for the line.

Q. What do you contemplate its condition would be without any right to be a railroad?

A. Land and the iron and buildings.

Q. What would you estimate its value to be as a going institution, taking into account its earning capacity and its rights and franchises and tangible property?

A. With what it has earned, taking into consideration?

Q. Yes, taking into consideration its earning capacity?

A. If you will allow me to look at my notes here.

165 The ATTORNEY GENERAL: I would suggest that you are not talking of any particular year here.

Q. We will take it in the year 1904.

The defendants object to this for the reason that it is incompetent, irrelevant and no foundation laid.

A. Just the value of this section of road would be considered, in conjunction with the earning capacity in 1903 on which the figures for the 1904 assessment were based?

Q. Yes.

A. O, it could be, as an earning factor, could be considered as being worth a little over $40,000 a mile, about that.

Q. What is the amount of the bonds and indebtedness of that road?

A. $799,500.00 in Nebraska.

Q. What would be fairly its proportionate share of the total capital stock of the C. B. & Q Company?

The defendants object to this as being incompetent, irrelevant and immaterial and no foundation laid.

A. Why, figured on the basis of earnings, its share of the capital stock would amount to $3,380,000 in the State. I have not figured the different miles. But that is figuring on $62,600,000 earnings, as the gross earnings of the road.

Q. Exactly.

A. But figured on the basis of value that would be given it by investors, it would be a little less.

Q. What do you make the total value of the road according to the stock and bond proposition?

A. If the earnings would continue at $62,000,000 as they did in 1903, I would estimate that the road would be worth

166 $4,181,002.81.

Q. I want to ask you what the total earnings are that you take into account?

A. In the report of 1903 the total earnings of the C. B. & Q. Company as reported in their official report, which is in evidence, was $62,638,378.82.

Q. Now, how does that earning compare with the earnings of that road in other years?

A. It is the highest that it ever had up to that time and I think the highest since. It never has been as high since.

Q. So your calculations then, are based, so far as earnings of the road are concerned, upon the highest earnings of the road in any year?

The ATTORNEY GENERAL: Just for my information, is he talking about net earnings or gross?

Mr. GREENE: Gross.

Q. What mileage do you take into account in connection with these gross earnings, what total mileage of the road?

A. I didn't divide the gross——

Q. I know, but——

A. O, the 8,112.77.

Q. Is that the total mileage reported?

A. No, that is part leased there.

Q. I will ask you in regard to the B. & M. what the amount of the bonded indebtedness of that line is?

A. $2,464,150.00.

Q. How many miles of road do you figure?

A. 191.61.

Q. And what is the proportion of the stock assigned to that road, the value, of the two companies?

167 The defendants object to this as being incompetent, irrelevant and immaterial and no foundation laid.

A. Would it be proper for me to make an explanation here?

Q. Yes sir.

A. The stock value of the C. B. & Q. Railroad I have divided, supposing that such a thing as stock values were to be considered in determining the value of the railroad, which is a position that I dont' believe is correct. But the earning capacity of the road being a proper subject of consideration——

The ATTORNEY GENERAL: In fixing the value?

A. —In estimating the value, possibly, I have assumed in the figures that I present here, that the stock of the C. B. & Q. System, is worth $200 a share, which is another estimate that I only obtained from information, and for the purpose of making a basis of distribution of value, as I don't believe that the capital stock of the C. B. & Q. Railroad, if thrown on the markets, would bring $200 a share as a whole.

Q. You might state in this connection, what the fact is about the stock?

A. The stock of the C. B. & Q. Railroad is not based on any specific mileage from the fact that the parent company has taken the position of an investing company, if you please; so that most of the stock issues have been issues made by the Illinois or the Iowa corporation from time to time.

Q. What is the amount of this stock issued from the time—up to 1903?

A. Until now it has an outstanding stock issue of 1,108,391 shares of the par value of $100 per share, and this stock issue has for a number of years not been an issue of stock on any specific
168 mileage of the road. As an example of what I refer to, I will call your attention to the fact that in the report of 1901, there was an increase of $10,000,000 of the capital stock of the C. B. & Q. Company in Iowa, and that it was expressed in their statement, I can't turn to it just now, but it was expressed explicitly in their statement, that this $10,000,000 that was issued by this Iowa corporation was to be expended in constructing a road in Dakota or rather Montana and Wyoming. It specifically stated from Tulock to Cody. And from the fact of this non-distribution, according to mileage of the stock issues of the C. B. & Q. Railroad, for the purpose of determining the stock value that would be proper to be distributed along the different lines of road, I have taken this gross earning of $62,638,378.82, and have determined the amounts of this sum earned by the roads in Nebraska, under the different headings that they are known by, and credited the full value of this stock issue of the system, assuming it to be $200 a share, after deducting $29,000,000 of property other than railroad property owned by the stockholders, and on which taxes are paid locally in various states, giving the percentage of each one of these subdivisions that they would be entitled to of such an ascertained stock value according to what they have done. The ascertained stock value would be 1,108,391 shares at $200 per share, which would make a total sum of $221,678,200, and as the stockholders owned this $29,000,000 worth of other property on which taxes are paid locally, I deduct that $29,000,000 from that sum, which leaves $192,678,200 to be

so distributed. The question has been asked me as to what the B & M. proportion of that sum would be?

169 Q. Yes.

A. And as the B & M has a gross earning of $2,977,940.61, it would be 4.753 per cent. of that gross earnings of the road, and if that earnings should be considered as a factor, it would make the proportion of the stock value belonging to the B. & M. road in Nebraska, $9,157,994.84.

The ATTORNEY GENERAL: Have you carried that out per mile?

A. I haven't figured that per mile, I just figured out the basis you had estimated.

Q. What would be the total stock and bonds thus credited to the B & M.

A. The bonds which have been issued on the B & M. portion of the Nebraska roads being $2,464,150, and this proportionate value of stock being $2,977,940.61, would make the total value of the B & M. on a stock and bond basis, $11,622,144.85. Shall I give the assessment?

Q. No, that it all now, the assessment I suppose is reported?

A. Yes.

Q. Now, I call your attention to a statement which you have prepared and ask you to give the names of the various companies that you have estimated the bond and stock value of in your statement.

The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. I have made a statement which covers the
A & N road,
C. N. & K. road,
170 Grand Island & Wyoming Central,
Kansas City & Omaha,
The Lincoln & Black Hills,
The Lincoln & Northwestern,
The Nebraska Railroad,
Nebraska & Colorado,
Nebraska, Wyoming & Western,
Omaha & North Platte,
Omaha & Southwestern,
Oxford & Kansas,
Republican Valley,
Republican Valley & Wyoming,
Republican Valley, Kansas & Southwestern.

Q. In other words, you took the corporations as they have been assessed by the State?

A. I did.

Q. As appears by Exhibit "A" to the Bill of Complaint?

A. Yes sir.

Mr. GREENE: Now we will offer this statement just referred to by the witness, as a part of the testimony of this witness:

The exhibit referred to is marked Exhibit 2, "C. W. P."

The defendants object to this as being incompetent, irrelevant and immaterial, and no foundation laid.

Q. What would be the total value of the Burlington lines in Nebraska measured in this way?

The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

171 A. Measured in this way, it would be $80,000,000. Taken on the value of the stocks and bonds, $80,015,364.81. Mind you, this is not the value, I don't swear that is the value of it.

Q. Now, in estimating the gross earnings of the lines in Nebraska what arbitrary or constructive earning is given?

A. In the gross earnings of Nebraska, where it is arising from the early days of the corporation, when it needed assistance, the C. B. & Q. allowed them 1.4 miles on each mile that they hauled traffic which went east of the river, or came from east of the river into Nebraska. In other words they were allowed 140 miles in the percentages figured, for each 100 miles that they hauled freight.

Q. Does that system prevail to-day?

A. It does in their system of book-keeping.

Q. Did it in 1903?

A. It did in 1903.

Q. And 1904?

A. And 1904.

Q. Now have you made any figures or any calculation with reference to this fictitious or constructive earning?

A. I have.

Q. Now state what you included in your calculation and what earnings you excluded in this calculation?

The defendants object as incompetent, irrelevant and immaterial and no foundation laid.

A. The earnings that are reported by the accounting division of the C. B. & Q. in Nebraska, as I have stated before, are $15,562,600.81.

172 Q. That appears in the report, does it?

A. No, that is the accounting report, the auditor's report.

The ATTORNEY GENERAL: That is the gross earnings in Nebraska?

A. The gross earnings in Nebraska according to their original figures furnished in the auditor's office. And I found on investigation that this constructive mileage of 1.4 miles for each mile carried, had been extended to the interstate commerce passing through the state.

Q. Define what you mean there now; there are two kinds of interstate commerce, that which originates in the State and goes out, and that which originates outside of the State and comes in?

A. I have not considered the intra state commerce, that is from this State to another one, in my estimates, from the fact that as a railroad man and as an investigator I do not know but what the business that would originate in Nebraska and properly furnished by the Nebraska roads to the C. B. & Q. road should be entitled to this constructive mileage. That bonus for the origination of business, in the

extension that the Auditors of the railroads have made, giving this constructive mileage to the interstate commerce business, the business that originates beyond the State of Nebraska, and merely passes through the State, should not be considered in this estimate. The constructive mileage should not be considered. The true mileage would be proper to go in. I have made an estimate of what the gross earnings should be with the interstate commerce elimina'ed, and it makes the gross earnings of Nebraska properly, but $13,392,404.21.

173 Q. Instead of what?

A. Instead of the $15,562,681.81. And in the distribution of the values of the railroad, if it were to be based on stock values, naturally would leave but 21.38 per cent. of that gross stock value to Nebraska for distribution, and with those figures it would make the stock and bond value of the roads in Nebraska $73,348,699.13.

Q. Tell me what per cent. of the business done over the Nebraska lines is interstate business?

The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. O, it is 80 per cent. of the freight traffic on these lines that partake of interstate traffic.

Q. Do any of these railroads that are mentioned here in the assessment roll of the State have any outstanding stock?

A. Not outstanding, any stock that is in existence is in the hands of the C. B. & Q.

Q. And the stock that is out, the outstanding stock, or whatever stock you have given, in the millions, is either the stock of the railway or railroad company and not stock of the constituent companies?

—. ——.

Q. Is there any C. B. & Q. Stock in the market now?

A. It is not quoted, it has been taken off the New York Stock Exchange.

Q. How long since it has been taken off the market?

A. O, two years, I think, possibly there were a few trades after the Northern Security Company was on the market.

Q. Did you ever know of it selling at $200 a share, did it ever reach that point?

174 A. There were a few sales at $200 I have understood, but of personal knowledge, I don't know of any such sales. It was quoted for some time at from $150 to 197, I remember that.

Q. Well, that was during the time——

A. When they were purchasing control.

Q. And it run up then. But until they started in, what was it quoted at?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. O, $130—$125 to $130.

Q. Is the dividend on this stock in any way guaranteed by the Northern Pacific or any other company?

A. Only from general knowledge I get that—I understand that is the case.

Q. I call your attention to the annual report which has been marked Exhibit 1, in this case and I call your attention especially to page 6.

A. Yes.

Q. Examine that.

A. O, this is the report of the operations in the payment of interest on the Northern Pacific—Great Northern joint C. B. & Q. collateral bonds. It is evident that those three companies together are back of these collateral bonds.

Q. That relates only to the bonds?

A. Yes, to these 4 per cent. bonds, of that collateral bond business. I don't think it would affect the value of the stock of this company, although it shows that there would be back of the interest payments, and of any securities—for instance Northern Security stock—
175 there they would have three railroads back of that instead of one, of the C. B. & Q. stock. Personally I am figuring it as being on its own basis.

Q. Well, would the fact that the stock of the "Q" was backed in this way inhance its selling price in the market?

A. It would have that effect. It would have a steadying effect on the market price of the C. B. & Q. stock.

Q. It would be an element in the price of it?

A. It could be considered as a factor in determining the market price from that time to this, but up to that time, it wouldn't have that effect.

Q. Now, you will prepare this other statement?

A. I think here is an analysis of the bonded indebtedness of the Nebraska road showing what sections of the road is bonded and how much for, that should accompany this other statement that I made.

Q. I will just call your attention then to this statement. You prepared this also, did you? (Referring to Exhibit 3).

A. I did, yes sir.

Q. I call your attention then to the paper statement showing bonds outstanding June 30, 1903, and I ask you what that is?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. In the statement that I have presented, Exhibit 2, it will be noticed that I have specified the amount of bonded indebtedness of the various sections of Nebraska railroads owned by the C. B. & Q. Company, and in statement Exhibit No. 3 there is an analysis
176 of the bonded indebtedness of the whole system of the C. B. & Q. Railroad. The bonds of the C. B. & Q. Railroad do specify mileage, and mortgages have been executed on certain sections of the road and placed in trust to secure the bondholders. In this statement the different miles expressed in the various mortgages are compiled and in an accompanying statement with that mileage statement, a distribution between the various States in which the C. B. & Q. operates, of that bonded indebtedness, is made.

Q. You took this as a detailed statement?

A. This is a detailed statement of all this bonded indebtedness.

The ATTORNEY GENERAL: An analysis of the entire debt of the C. B. & Q.?

A. An analysis of the entire bonded indebtedness of the C. B. & Q. Company.

Q. You can take out those comments.

A. Well, those are explanatory. I could say that for the further confirmation of these figures, the report that you had in there gives all the details if you look at it.

Q. Taking the A & N for instance in Nebraska, and considering the tangible property, the value of the tangible property and also the intangible property, considered with reference to the stock and bonds, and the earnings, gross and net, what would be its value, per mile, for 1904?

The defendants object to this on the ground that it is immaterial, irrelevant and incompetent and no proper foundation laid.

A. I have testified to that.

Q. Well, I want it here in a different form.

177 A. It will be the amount stated in my Exhibit No. 1.

Q. Just give the amount, have you got it there?

A. Yes, sir, $4,181,002.41.

Q. I will ask you the same question with reference to the B. & M road.

The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $11,622,144.84.

Q. The same question with reference to the Chicago—Nebraska & Kansas.

The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $105,014.25. And in regard to that value of this piece of road I would say that the principal cause of this high estimate is the fact that early in the construction of the Republican Valley road, a mortgage was issued on this section which amounts to over $16,000 a mile, and it was backed by the C. B. & Q. Company and this mortgage is considered in the valuation that is placed here. As an investment to-day it would not be worth $60,000.

Q. What would you say the valuation of the Grand Island & Wyoming Central is, taken on the same basis?

The defendants object to this for the reason that it is irrevelant, incompetent and immaterial, and no foundation laid.

A. $13,994,246.68.

Q. What would be the value of the Kansas City & Omaha?

178 A. $1,121,816.68.

Q. Do you know anything about the purchase of that road?

A. The report of the Company shows they paid $1,146,000 for it.
Q. How many miles?
A. 193.08.
Q. What would that make it cost per mile?
A. About $6000 per mile.
Q. What would be the value of the Lincoln & Black Hills road?

The defendants object to this as being incompetent, irrelevant and immaterial, and no proper foundation laid.

A. $3,462,384.48.
Q. What would be the value of the Lincoln & Northwestern?

Defendants object to this as incompetent, irrelevant and immaterial and no proper foundation laid.

A. $894,040.41.
Q. What would be the value of the Nebraska railroad?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $4,570,262.41.
Q. And what would be the value of the Nebraska & Colorado?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $11,314,706.56.
Q. What would be the value of the Nebraska, Wyoming and Western?

179 The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $1,390,269.65.
Q. What would be the value of the Omaha & North Platte?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $3,177,771.51.
Q. What would be the value of the Omaha & Southwestern?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $1,948,479.58.
Q. What would be the value of the Oxford & Kansas?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $1,184,410.38.
Q. What would be the value of the Republican Valley?

Defendants object to this as being incompetent, irrelevant and immaterial, and no proper foundation laid.

A. $19,989,540.19.
Q. What would be the value of the Republican Valley & Wyoming?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $893,880.24. And I wish to make the same remark in regard to this value that I did on the Chicago, Nebraska & Kansas. The greater part of the apparent value is in bonds on this road.
180 It was a part of this same mortgage that I have expressed.
Q. What about the value of the Republican Valley, Kansas & Southwestern?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $165,394.61.
Q. Republican Valley & Wyoming?
A. It couldn't be considered under the most favorable circumstances as being worth over $6000 a mile as an investment.
Q. I wish you would turn to the statement of the amount of taxes paid by the plaintiff upon all its property for the year 1903?

Defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. $1,778,476.09.
Q. What per cent. of the gross earnings is that taxed?

The defendants object to this as being wholly immaterial.
A. 2.8 per cent.
Q. Have you made any calculation of what per cent. of the gross earnings of the portion in Nebraska is the amount levied for 1904?

Defendants object to this as being wholly immaterial.

A. In that bill of complaint it figures very nearly five per cent.
181 Q. What is the average on the system?
A. 2.8 per cent.
Q. On the system?
A. Yes, on the whole system.
Q. What is the per cent. of the trackage in Nebraska, compared to the total, have you worked that out?
A. Yes, sir, I have that here.
Q. What is it.
A. 32.8 per cent.
Q. What do you estimate the total mileage at, or what do you take as the total mileage, I mean, of the system?
A. 8,112.77 miles.
Q. And what is the total mileage in Nebraska?
A. 2611.47.
Q. Now, what per cent. have you estimated, or have you worked out the percentage of value in Nebraska, as compared to others?
A. I have, to my own satisfaction.
Q. Well, now, I will ask you what is the value as you worked it out, of the road in Nebraska, compared to others?

The defendants object to this as being incompetent, irrelevant and immaterial and no foundation laid.

A. I estimate that 22.6 per cent. of the value of the railroad is in Nebraska.

Q. What would that be?

A. It would be $75,689,873.

Q. You have given the details of this in the other statement?

A. This is a different one.

182 Q. Now, will you explain then—explain your calculation in this last answer.

The defendants object to this as being incompetent, irrelevant and immaterial and no foundation laid.

A. In the figures that have been given immediately preceding this answer, I have assumed to estimate the value of the stock and bonds of the railroad based on the earnings of the road, and these earnings are the earnings reported by the Auditor which contained the excessive allowance on interstate traffic, and in the figures presented now, I have made an estimate of the value of the road from the position of the investor. In most of the railroad operations of the country, money has to be borrowed, and the parts of the road that are considered as good security are offered as such security back of the bonds. And it is evident that on the C. B. & Q. Railroad, the bonds that have been issued on the Illinois, or the portion of the road east of the Mississippi River, have been considered of at least twice as much value as has been borrowed on the Nebraska portion of the railroad. This condition has been brought about from the fact that east of the Mississippi River, the Burlington railroad owns vast properties in Chicago, and a great deal of double track, and as a result they have borrowed on that section of their road a sum amounting to $69,819,050, while on the Nebraska section they have raised but $32,154,100. And in the extending of this value to the mileage of the system, it is evident from an analysis of the bond indebtedness of the Burlington railroad, that on their mileage east of the Mississippi River, they have borrowed an average amount of $42,280 a

183 mile, while on the railroad in Nebraska, they have borrowed but $12,310 per mile, and if this is a reflex of the market value of the road, and it should be considered as part of the estimating of the value of the road in Nebraska, certainly the statement that I have given should be attached to the papers that we present, because from the demonstrations made of the amounts of money borrowed on the different sections of the road, it would be clear that the road in Nebraska would be worth not over one-third what the road in Illinois would be worth as security.

Q. What would you say from your knowledge—you are familiar with the C. B. & Q. system?

A. I am.

Q. What would you say as to the relative value of the property in Illinois taken as a whole compared to the value in Iowa?

Defendants object to this as being wholly immaterial, incompetent, irrelevant and no foundation laid.

A. If you would take the terminals and throw them in as part of

the value of the mileage in that, east of the Mississippi, the road in Illinois would figure out over three times the value.

Q. Of Iowa?

A. Of Nebraska.

Q. Of Nebraska?

A. Yes sir.

Governor MICKEY: I suppose that means you are including the through traffic?

184 A. Well, traffic goes to make value of course.

Governor MICKEY: You have eliminated the through traffic in this State?

The WITNESS: No, I have not.

Governor MICKEY: I understood you to say a little while ago that you had done that.

The WITNESS: Only in the constructive, the additional mileage. The through traffic was left, the full proportion of that.

Q. That matter of constructive traffic is purely a matter of book keeping?

A. That is all, and it is something that the railroad folks here have carried too far.

Q. In the books it is put down that the Nebraska portion of the road hauls 140 miles, whereas it really hauls but 100, but that does not change the fact.

A. No, sir, and this estimate here is the investor's estimate (referring to a statement handed to counsel).

Q. Colonel, I will ask you what in your judgment the road could be reproduced for in this state, per mile?

The defendants object to this as being incompetent, irrelevant and immaterial and no proper foundation laid.

A. That, under present circumstances, is a little difficult question to answer on account of cost of right of way. I could give you an estimate of what prairie roads naturally would cost to build and construct, but it would make a good deal of detail to attempt to estimate the value of the road based on present real estate values.

185 Q. You know the value of lands per acre?

A. I would only have to take values that might be presented to me, as personally, I would not know of those facts, but I suppose a man here could tell those things.

Q. What would prairie roads cost for building and equipping in the shape that this "Q" is?

A. With 65 pounds — steel, I can make an estimate on that. It would be worth from 18 to $23,000 to construct a mile of prairie road under present conditions and have it stock the way it is.

Q. Now, what would be the depreciation of a road as it is ordinarily maintained?

The defendants object as incompetent, irrelevant and immaterial and no proper foundation laid.

A. O, it depreciates continually, and the iron too. It is, say 7 to 10 per cent.

Q. That is to say there is always present in a railroad of 2600 miles, a depreciated condition?

A. Yes, have to keep throwing cars and engines into the scrap pile.

Q. It never reaches the stage of perfection that it has when it starts so far as material is concerned?

A. No, sir, now I want to say in regard to this construction of prairie mileage: While my estimates are liberal in that case on the ordinary prairie railroad construction, I can say that I have been over the Burlington road just lately, and that the changes that have been made around Red Oak, for instance, in a prairie country, I can see very readily that it would run the value of railroad con-
186 struction up materially above the figures I have given, but in the most of the construction of the road in Nebraska, I do not find that extraordinary expenditure of money. I don't know whether you understand what I mean.

Q. Yes.

A. (continued) And they have changed the face of the country there for several miles, so that that estimate can not be considered in the figures I have given, in such construction. Now then it is understood that I can prepare this other statement?

Q. You can bring it in the morning. You prepared this Exhibit 3 yourself some time ago?

A. Yes, I prepared that.

Q. Then you want to put this in as a part of your testimony, as containing the details?

A. I do, from the fact that it gives all the details of the bonded debt of the C. B. & Q. Railroad Company and I think it is important.

At this time an adjournment was taken until 9 o'clock A. M. tomorrow, July 12th, 1905.

Parties met pursuant to adjournment, at 9 o'clock A. M., July 12th, 1905, at Room 711 New York Life Building.

Present: The Witness, Edward F. Browne, Charles J. Greene, Solicitor for Complainant; Norris Brown, Attorney General, Solicitor for Defendants; R. D. Pollard, Tax Agent B & M R R; Charles W. Pearsall, Examiner.

187 Further proceedings were as follows:

EDWARD F. BROWNE, the witness on the stand at the time of the adjournment above noted here resumes the stand and his direct examination is continued as follows:

The WITNESS: Referring to my testimony of yesterday, I wish to make it clear that the answer that I gave in regard to the stock and bond values of the Nebraska sections was only an estimate, based upon the gross earnings furnished by the Auditor's office, which included the constructive mileage and that the figures that I now present by statement marked Exhibit 4, there being three pages to said statement, are the figures which in my estimation, should be considered as the value of the road in Nebraska, if the value of the stock and bonds were to be considered in such an estimate. These figures have

eliminated the constructive mileage on strictly interstate commerce business that originates beyond Nebraska and passes through it to other states.

Q. Are there any further explanations that you wish to make in regard to your testimony?

A. Until I would see it transcribed no.

Q. Colonel Browne, will you now briefly summarize your opinion and judgment as to the value of the lines in Nebraska for 1904?

A. The value of the road is reflected by the financial statement of the Company, in regard to its value in accordance with the bonded indebtedness that would indicate that investors considered the road to be worth $75,689,873.00, that is based on the issues of bonds
188 and money borrowed and so forth. On a basis that should be figured from the earnings of the road in case the fact should be considered, the value in the State of Nebraska would be $73,348,-699.16, on the basis of cost of construction, an estimate of $24,000 a mile.

The ATTORNEY GENERAL: An average of $24,000 a mile?

A. Yes; an average of $24,000 a mile, or $62,669,220; and in the market these three factors are the controlling ones in the estimate of values.

Q. Now, what would you estimate the value of the road in Nebraska for the year in question, all those factors considered?

A. I would assume to add these three sums together and divide them by three; there would be the three factors that control the value of the road.

The ATTORNEY GENERAL: In round numbers, $70,000,000?

A. Yes; that is practically what it would be.

Q. That would be for the entire mileage?

A. Yes, while using these factors on the B. & M. railroad in the present estimate, which would practically make the road worth $70,000,000 in this state. It should always be considered that the earning capacity of any western road depends so largely on the condition of crops that that estimate is a very uncertain factor.

Q. That is where the estimate is made for any particular year?

A. Yes; for any particular year; and in case it should be considered as material, an average of seven years should be used in such an estimate.

189 Q. That is the way the world figures in the markets?

A. Yes.

Q. Of course, in all the estimates, you have used the year that was the most prosperous?

A. Yes sir.

Q. Where the income of the road was the highest in its history?

A. Yes sir.

Q. That was 1904, was it?

A. 1903.

Cross-examination.

By Attorney General BROWN:

Q. Colonel, your home is at Denver?
A. No, I live at Aspen, Colorado.
Q. How long have you lived in Colorado?
A. 20 years; over 20 years.
Q. You say your business is that of a railroad statistician?
A. Yes, and mining.
Q. Will you explain what you mean by a railroad statistician?
A. The compiling of the figures regarding the earning capacity of roads, and getting together figures as to the advisability of building the road through different sections.
Q. Does that business require you to investigate the values of railroad stocks and bonds, generally.
A. It does.
Q. How long have you been giving particular attention to estimating the values of railroad properties?
A. Particular attention for the past four years.
190 Q. What companies have you worked for in that respect?
A. Every road in Kansas and Colorado, the Northwestern the Milwaukee & St. Paul.
Q. And others?
A. Yes; the Wisconsin Central, the Atchison, Topeka & Santa Fe, and numerous other roads; I can't remember all of them.
Q. Now, how long have you been employed by the complainant company in this suit?
A. Since last December.
Q. Since last December.
A. I am not employed by them except in this way——
Q. What does your employment consist of with the complainant company?
A. In determining this value.
Q. In ascertaining the value of its properties in the state of Nebraska for the year 1904?
A. Yes sir.
Q. And you say you have been at work on that question since last December?
A. No. In December, the company asked me if I would develop the figures for them, and in December and January I gave three weeks of my time towards that work, and I have been here 8 days on this.
Mr. GREENE: At the present time.
The WITNESS: At the present time, yes.
Q. Now, your figures and estimates that you have given here in your testimony are based on facts that you got from the report of the company's auditor.
A. The official report of the company, yes sir.
191 Q. And the official report marked Exhibit 1, in evidence?
A. Yes sir.
Q. Have you consulted any other evidence or statistics, upon which

you base your conclusion except the evidence that you have mentioned?

A. Oh, the market; I looked over the prices of the stock at the time of the transfer of this company.

Q. When was the transfer of this company?

A. I don't remember the date, but it was sometime in 1901.

Q. Did you examine the market reports as to the quotations of the complainant's stocks and bonds during the year 1904?

A. I have noticed their bond quotations, but I don't remember of seeing any stock trades in 1904.

Q. It was too valuable to be offered for sale, wasn't it?

A. I don't think so; everything is saleable.

Q. Well, it wasn't quoted on the markets?

A. It wasn't quoted on the markets; it is withdrawn from the stock markets.

Q. Withdrawn by the owners from the stock markets?

A. Yes, it is not listed any more.

Q. Did I understand you to say yesterday that the stocks of the complainant were approximately of the value of $200 a share?

A. For the purposes of this exposition or explanation, I have assumed it to be $200.

Q. Your figures are based on that value?

A. My figures are based on that value.

Q. If these stocks and bonds had a market value in the year 1904, you don't know what it is?

A. The bonds were quoted.

192 Q. The stocks, I mean; leave the bonds out—If the stocks of the complainant company had a value in 1904, or 1903, you don't know what that value was?

A. No, there were no trades of Burlington stock in the years 1903 and 1904, that I know of. If there were any, it would not be a quotation on the New York market, which is about the only reliable reflex of such values, but it would necessarily be a curb transaction, as the stock is withdrawn from the stock market.

Q. Now, Colonel, can you tell what is meant by the stock and bond test as applied to the value of railroad properties?

A. Oh, the assumption that the value of a railroad is entirely represented by the values of its stocks and bonds, naturally would be, the bonds and stocks figured together and estimated.

Q. If, to the value of the stocks, you add the value of the bonded indebtedness, you have approximately the value of the entire railroad property, isn't that true?

A. It is not true. You would have the value of the property as well as its speculative value.

Q. You mean by that that they would then have the market value of the property, but not its real value?

A. The quotation of the sale of a few shares of stock cannot reflect the total value of the property from this fact, that is the 1,000,000 Burlington shares would be placed on the market in an attempt to be sold in 30 days, or some short specified time, it would not bring $200 a share.

Q. But, if you could ascertain the actual real value of the capital stock and of the bonded debt together, that would represent the actual value of the railroad company, isn't that true?

193 A. If such a thing could be done.

Q. And if you would divide that sum by the total mileage, you would have the actual average value per mile of the entire system, wouldn't you?

A. You would not, from the fact that railroad companies, especially the companies known as purchasing companies, which own other roads, could be misrepresented entirely by such a system of figures, and in addition to that feature, the vast holdings of railroad companies in other properties than railroad property would be included in such an estimate.

Q. What is the earnings test, as applied to the values of railroad property?

A. In the west, with an average of 7 years of earnings, in all points west of the Mississippi river, an investor would consider that this average should maintain at least a 6 per cent. payment.

Q. Does your judgment approve of the earnings test, in fixing values?

A. It is a test that would be proper to consider, but not a test that should be depended upon from its excessive variation. A failure of crops in the territory of the C. B. & Q. railroad would reduce their earnings 50 per cent.

Q. I call your attention to page 5 of Exhibit 1, being the 49th annual report of the complainants for the year ending June 30th, 1903: The gross earnings of the entire system, every portion including all leased and controlled roads, for the year ending June 30th, 1903, are given at what figure?

A. $62,638,378.82.

194 Q. And the total expenses of operation and taxes paid are given at what figure?

A. $40,542,472.76.

Q. Leaving a net income from the operation of what?

A. $22,095,906.06.

Q. That sum is 4 per cent. interest on approximately how much?

A. Approximately $550,000,000.

Q. On approximately $550,000,000?

A. Yes.

Q. Or, is it 4 per cent. interest on approximately $67,000 per mile of the entire system of the complainant?

A. It is not so.

Q. Will you tell me how much?

A. There is no way of extending that thing to specific miles.

Q. Well, the net income from operation, given at approximately $22,000,000, is 6 per cent. interest on approximately $365,000,000, isn't that true?

A. Yes.

Q. Or 6 per cent. on approximately $44,000 a mile, figuring the total mileage of the company at 8112.77 miles?

A. A division could be made of that character, but it would not represent the value per mile.

Q. Now, I call your attention to pages 9 and 10 of Exhibit 1, the total capital stock issue of the complainant is given at what?

A. $110,839,100.

Q. Which, figured at $200 a share, would aggregate twice that sum, or $221,678,200?

A. Yes; that is the figure that I have developed.

195 Q. Now, if you deduct from this last sum the $29,000,000 worth of other property locally assessed, outside and inside, of the State of Nebraska, there would remain approximately $191,000,000?

A. $192,000,000.

Q. Well, approximately, $192,000,000?

A. Yes.

Q. Now, if to this stock value of the company you add its funded debt, given on page- 9 and 10 of the Exhibit referred to (Exhibit 1) at $156,050,900, you would have approximately a value of $348,050,900?

A. Yes; but in those estimates you have not taken into consideration the bonds that are in the sinking fund which have been paid, amounting to approximately $14,000,000.

Q. Deducting the $14,000,000 sinking fund from my estimate, would still leave approximately $334,000,000 of stock and bond values?

A. My figures developed $335,000,000.

Q. Which divided by the total mileage of the road would leave an average stock and bond value of the system at approximately $42,000 a mile?

A. Such a figure could be estimated, but it would not show the value of any mileage of the road.

Q. Now, why wouldn't that represent approximately the real value of the complainant's railroad property in all of its several states?

A. Because this railroad property has a very diversified value.

Q. Well, if you owned all the stocks and all the bonds, you would own all the property wouldn't you of that railroad property?

196 A. We would, certainly.

Q. Then it does represent all the value of the property that the complainant has?

A. That figure does represent all the value of the company that the complainant has.

Q. The thing that you object to is the distribution per mile by dividing the total value by the total mileage?

A. That's it; yes, sir. Could I explain to you what my idea on that is, or what the truth would be in regard to it?

Q. Go ahead.

A. By arbitrary division of the total value of the Burlington railroad, the one in controversy, with a figure such as you propose, it would assume that the double trackage of the Burlington road in Illinois, with its great earning capacity, and with the great terminal facilities at Chicago should be extended to the prairie roads of Ne-

braska, which would be illogical from an investor's point, from the fact that the Illinois portion of the C. B. & Q. road would be worth $100,000 a mile, great portions of it, while in Nebraska it would not be, by the wildest imagination estimated at over $27,000 to $30,000. That is the reason I say that the division of the values by the gross mileage would be an illogical method, and wrong, because it would take to Nebraska property that value in Illinois.

Q. If that were the plan in Illinois as well as Nebraska, it wouldn't hurt the Company any?

A. No; if Nebraska and Illinois agreed on the division.

Q. The lines in Nebraska contribute largely to the excessive value that you mention of the road in Illinois, do they not?

A. They do.

197 Q. The Nebraska lines are a part of the system of the complainant's property?

A. They are a part of the system, but they are evidently separated in the State of Nebraska, by both the State and the company.

Q. But the complainant company operates the lines in Nebraska as a part of their system in the several states through which the Company operates?

A. They do.

Q. You testified, Colonel, that the value of the complainant's company in Nebraska on the basis of cost of construction is about $24,000 a mile?

A. Yes.

Q. Now, Colonel, what facts do you base that conclusion upon?

A. Oh, from the general knowledge that I have of the cost of constructing railroads. I have built railroads and been interested in their construction.

Q. Do you know the value of lands in this state?

A. That is the factor that prevents me from naming a definite amount. I don't know what the values of the lands are.

Q. Do you know how much rolling stock the company has in this state?

A. Not in this state.

Q. Do you know what it cost?

A. I don't know what it cost, only the average value of rolling stock for a mile of road; that is my figure.

Q. What in your judgment was the cost of construction of the entire railroad system now operated by the complainant in this case?

198 A. I have not developed the figurse, and it would take me a long while to do so.

Q. If they have given the cost of construction in their reports, do you think that would be reliable?

A. I can't tell. Let me explain that thing. The railroad companies of the United States have adopted different ways of bookkeeping, in their charge of construction accounts, and I wouldn't be able to answer this question without a long and tedious investigation.

Q. What do you include in your basis when you fix your value on the basis of cost of construction at $24,000 a mile in Nebraska?

A. I make a round estimate of possibly from $7,000 to $10,000 per mile for right of way, and the balance for iron and ties and grading and such things.

Q. And rolling stock?

A. Yes sir.

Q. And equipment?

A. Yes sir; equipment.

Q. In other words, your judgment that this Company's property is worth, based on the cost of construction, $24,000 per mile, includes the entire cost of putting the railroad in the same shape that it is now?

A. About, practically.

Q. With the right to exist as a railroad?

A. Yes; oh, yes.

Q. I call your attention to page 22 of Exhibit 1—the cost of the road and equipment is given isn't it?

A. Yes, it is.

Q. At $302,654,666.85?

199 A. It is.

Q. That would be the average cost per mile of approximately $38,000 per mile, wouldn't it?

A. I have said it could be divided that way, but it would not represent the cost of any mile of road.

Q. The total cost of the road and its equipment, including the cost of investments and securities of controlled roads, and their sundry investments and assets and cash, amount to—amount to, as given in the report, at $366,285,417.66?

A. It is.

Q. That would be an average value per mile of approximately $45,000 dividing that cost by the total mileage of the road?

Mr. GREENE: You mean the total system?

The ATTORNEY GENERAL: Yes.

A. The face of the report would show conclusively that it could not represnt an average value of a mile of road.

Q. As I understood, Colonel, you gave this morning as the value of the company, based on the bond basis, at approximately $75,000,000 in Nebraska?

A. Yes.

Q. That basis does not include the stock values at all, does it?

A. No sir.

Q. What would you say was the value of this company in this state on the basis of stock value, approximately?

A. From $41,000,000 to $43,000,000 after eliminating the bonded indebtedness.

Q. You don't consider your bond test alone as at all satisfactory do you colonel?

A. Not conclusively, no sir.

200 Q. Well, on that basis if a road had no bonds, it wouldn't be worth anything?

A. That is exactly the position I wish to call your attention to.

Q. Therefore, unless the road is bonded for all it is worth, the bond test is entirely false?

A. Oh, no; not so broad as that. A corporation in borrowing money, ordinarily borrows money on the best security that it has, from the fact that the placing of bonds is a business venture, the same as any other business proposition, and it is evident that this company has borrowed much greater amounts on their Illinois property than they have on their Nebraska property and that is a reflex of the investors' idea of the value of property.

Q. May it not be also a reflex of the company's disposition not to borrow any more money on Nebraska property?

A. It might be consiered that way, yes.

Q. So that fact shows that there is no controlling force in the bonded test.

A. There is no controlling force in anything except the physical property of a company as to its value.

Q. Now, you say the value of the property of this road in this state, on the earning basis is $73,000,000?

A. I have said so, in case it was used as a factor in determining the value as a factor only in determining the value.

Q. Will you state whether you mean the net or the gross earning basis?

A. Gross earnings.

Q. Why do you use the gross earning test?

201 A. That is the origination of business.

Q. But a property that it costs more to operate than it earns would not be valuable simply because its gross earning is that much, would it?

A. It would not.

Q. What is the objection in your mind to using the net earning test?

A. From the fact that in Nebraska, especially, they have got this constructive mileage, and that would throw that entirely out of gear. It cannot be used as a basis of determining what it cost?

Q. Why not?

A. Because it would be a constructive capacity entirely, and that would be a reflex on the net earnings in such proportion as would put it out of reason.

Q. The constructive mileage you talk about is simply a matter of bookkeeping with the company, isn't it?

A. That is all; it don't earn it.

Q. Do you testify that a mile in Nebraska does not earn as much in proportion to the tonnage as a mile and a quarter in Iowa and Illinois of this Company?

A. I do.

Q. Do you know what the rates are from York to the Missouri river of this company?

A. I do not.

Q. Assuming that the rate on grains from York to the Missouri river is 14 cents a hundred, and the rate on grain from the Missouri river to Chicago is 11 cents a hundred, what would you say then as to

the relative earning capacity in Nebraska to a mile between
202 Nebraska and Chicago?

A. If such was the fact, Nebraska would earn more per mile.

Q. Well, isn't that a fact?

A. I don't know.

Q. Well, if it is a fact, the company would be justified then, wouldn't it, in crediting to a mile in Nebraska an earning for a mile and a quarter?

A. It would.

Q. And the value of the mileage in Nebraska, measured by the earning test should include this constructive mileage that you have eliminated.

A. In case that is the position of their tariff, not on interstate commerce, I have left that mileage in Nebraska.

Q. Taking up your statement, Exhibit 2, Colonel, you have given the bonds of the A. & N. and the capital stock of the A. & N., have you not?

A. I have given the bonds as they exist, and the figures, under the caption of stock, are the figures that would be derived from a division of the stock value of the company if distributed in proportion to the gross earnings of the road.

Q. In Nebraska?

A. In Nebraska, yes.

Q. There is no separate stock of the A. & N.?

A. There is not.

Q. The stock is distributed over the entire system?

A. Yes.

Q. While the bonds apply to some extent to specific mileage?

A. In most instances to specific mileage.

Q. I understood you to say yesterday that the value of the
203 A. & N. in Nebraska without the right to operate it as a railroad Company was $10,000 approximately a mile.

A. That was merely an estimate.

Q. What have you to base that estimate on?

A. There would be about $4500 worth of old iron and what could be obtained from the depots and buildings and the land.

Q. Do you know how many depots there are on that line?

A. I do not, as I say.

Q. Do you know how much rolling stock is used on that line?

A. I do not.

Q. And your estimate of $10,000 is just an estimate?

A. It was only an estimate, that is all.

Q. What did you fix as the value of that line per mile including the franchise?

A. What do you mean by the franchise?

Q. The right to operate as a railroad.

A. That would not include the franchise. The franchise about $5000 in the whole state. If the bonds that were issued on that A. & N. road, and the total value of the stock issues of the C. B. & Q. Railroad were to be distributed on a basis of gross earnings, with the

1.4 mile constructive earnings allowed the State of Nebraska included, it would make the stock and bond value practically $40,000 a mile.

Q. Did I understand you to say that the entire franchise value of the complainant, proper, in Nebraska, is only $25,000?

A. About $5000. You can get a new franchise for that.

Q. What do you understand by the franchise of a railroad company?

A. The right to construct it.

204 Q. Then the franchise value is the least value of railroad property?

A. O, it is hardly a consideration.

Q. The franchise includes the right to operate, as well as the right to construct, doesn't it?

A. Yes.

Q. And the two together in your judgment are not a factor of any importance in fixing the value of railroads?

A. They are not. O, the right to operate is a value—the permission to construct is the franchise.

Q. Now, referring again to Exhibit 2, your statement, you have given the total stocks of the constituent companies, as distributed as heretofore explained by you, as approximately $47,000,000.00?

A. I have.

Q. That is about one quarter or 25 per cent. of the total stock issue of this company, isn't it?

A. It is.

Q. And in this statement you have given the bonds of the constituent companies in Nebraska, at about $32,000,000 or 1-10th of the total bonded indebtedness of the Company?

A. O, not one tenth.

Q. I mean one quarter? Or 25 per cent?

A. Yes, about one quarter.

Q. While the company has over 32 per cent., hasn't it, of its mileage in this state?

A. Yes sir.

Q. These stock estimates given in this Exhibit 2, and distributed to the several constituent companies, is based on the pro rata

205 share of the stock measured by the gross earnings of the State?

A. Yes, with the 1.4 mileage included.

Q. Where did you get the figures of the gross earnings of this company in this state?

A. From their records.

Q. But not from the report that we have referred to here?

A. No.

Q. Colonel, a railroad is worth what it will sell for, isn't it?

A. Yes.

Q. And if the stocks and bonds of a railroad are on the market, you can buy the railroad in the market, can't you?

A. Yes, if you have the time and money. You can't buy it in a day. You can't buy any railroad in a day without making a

fictitious stock value that would be out of all reason and you necessarily would have to have a good deal of money. In an attempt to control the Northern Pacific Company, there were a few shares sold for $1000 a share, but that did not represent the value of that company.

Q. They never were paid for either, were they?

A. I don't know whether they were or not.

Q. Have you been over the lines of this Company in this State, all of them?

A. All except a few immaterial branches.

Q. Recently?

A. Oh, it was within the last two years.

Q. Did you examine the evidence that was presented by this Company to the State Board of Equalization for the year 1904?

A. I did not.

206 Redirect examination.

By Mr. CHARLES J. GREENE:

Q. Colonel, the stocks and bonds of the complainant represent its entire property, do they not?

A. They do.

Q. Railroads on the private side are not merchantable articles, but means of investment to the investing public. Men don't buy and sell a railroad but they may buy and sell the stock?

A. Oh, yes.

Q. Of course the stocks and bonds and market value of stocks and bonds varies according to the business conditions of the country, and the financial condition of the country?

A. They do.

Q. The basis, however, of their value is upon the earning capacity of the property, is it not?

A. Undoubtedly, yes sir.

Q. And in determining the earning capacity of the property, you have to consider the physical condition of the property and location and the general business conditions existing in its territory?

A. In the first estimate of constructing a railroad, it is necessary to determine what its business will be.

Q. Isn't it necessary to take that into account as one of the factors?

A. It is.

Q. Then you go a step further and you find the earnings of the entire corporation, that is a factor, isn't it?

A. It is.

Q. Then you take into account also the expenses of operation?

207 A. We do.

Q. That is a factor?

A. It is.

Q. The question of the market value of the stocks and bonds is

largely dependent upon the condition and the business of the road, isn't it?

A. It is.

Q. Or in other words, the earnings of the road?

A. It is—and on the speculative disposition of the public.

Q. The stocks call for dividends?

A. Yes sir

Q. And bonds call for interest?

A. Yes.

Q. The dividends and the interest to be paid out of the earnings of the road?

A. That is the supposition.

Q. Well, that is the theory, isn't it ?

A. That is the theory.

Q. And in order to meet the demands of the public or the owners of the stocks and bonds, there must be a surplus, unless they go into the market and borrow?

A. Good business management demands it.

Q. Are not all these factors interwoven and to be considered together?

A. They are.

Q. If you were asked to buy a railroad for a syndicate, what investigation would you make for the purpose of determining its value?

A. Make an investigation in regard to its constructive cost,
208 its cost of operation, looking up grades and such things, which influence the expense of operation, and in case the road was completed, and in operation, I would consider its financial standing and its earning capacity.

Q. One of the factors too, would be the territory in which it is located, would it not?

A. You have to consider that.

Q. And the density of population?

A. The density of population and the business that could be accumulated.

Q. That covers a good deal?

A. Yes.

Q. The fruitfulness of the country is a thing you consider in regard to the business to be had?

A. Yes.

Q. Whether it was a barren waste or a rich fertile soil?

A. It has everything to do with it.

Q. All these factors bear immediately upon the business?

A. Yes sir.

Q. That it may reasonably be expected that the road will do?

A. Yes.

Q. Now, then, you got to talking about the market value of stocks and bonds. Is it anything more or less than the reflection of the opinion of the public, the purchasing public, whatever their motive may be, as to the stability and quantity of the revenue of the company?

A. It has everything to do with it.

Q. It is the opinion or analysis of the general public based on that?

A. Based upon that, yes sir, but allow me to state here, that
209 the investing public uses a great deal of discrimination in regard to the purchase of stock where no reserve or surplus is known to exist, from the fact that you will find that a great many of the 4 per cent. stocks of the railroads of the United States are selling at from 80 to 82 or 3, while the 4 per cent. bonds will sell at par.

Q. It is not possible to get at the actual value of property simply by considering the bond issue alone, without regard to anything else?

A. O, no, it cannot be.

Q. Now, you cannot consider the value of the property—determine the value of the property by simply considering the stocks alone?

A. No.

Q. Neither could you get at the value of the property by simply taking the cost of the construction alone?

A. You could not.

Q. Now the total value of stocks and bonds of the C. B. & Q. represent the market value—the value of them represents the total value of all the property of the corporation?

A. It does. The bonds would represent amount of money borrowed on the property and the value of the stock would reflect the value of the property owned by the Company.

Q. After making the deductions to pay the interest on the bonds and the surplus to pay the bonds?

A. Yes sir.

Q. In other words, the issue of bonds is in a certain way a sort of a mortgage on the earnings of a road?

A. It is a mortgage on the road itself.

210 Q. And on the earnings of the road; I don't mean in a technical sense, but the bond of the road and the interest on the bonds must be paid by the earnings of the road?

A. There are cases where it has been paid out of the road itself, by foreclosure.

Q. I mean in the absence of insolvency, where it is paid, it has presumably got to be paid out of the earnings.

A. If it is paid it has to be paid out of the property itself or out of the earnings the interest on the bonds cetainly.

Q. Well, that is true, well the total value of the property of the Burlington—of the company is represented in that way, in a way, by the total value of the stocks and bonds, it don't follow that any particular division of the road is as valuable as any other division?

A. It certainly does not.

Q. Take for instance, there are some lines of the Burlington that don't pay operating expenses?

A. Yes, sir, 440 miles in this state.

Q. What company—you refer to the K. C. & O. and——

A. Just wait, I will tell you the exact mileage, I don't think that was quite correct that I stated in my answer. It is 295.4 miles in Nebraska failed to pay their operating expenses.

Q. What road?

A. The road from Kenesaw to Kearney, from Alma and Fairmont to Stromsburg, which is the K. C. & O., McCool Junction to Endicott; Odell to Concordia; Republican to Overton; and Culbertson to Imperial.

Q. How many miles does that foot up?

A. 295.4.

211 Q. I believe you testified yesterday to the fact that one of these roads recently purchased, that is to say the K. C. & O was bought for how much a mile? How much was it bought for?

The defendants object to this as being immaterial.

A. About $6000.

Q. About $6000 a mile?

A. Yes sir.

Q. And is that road according to your investigation paying expenses?

A. It lost $13,648.68 in operating last year.

Q. Upon a distribution of the total net earnings of the Company, upon the mileage basis, a road that was not paying operating expenses would get as much credit, would get the same credit as to earning capacity as any other fraction of the system?

A. It would certainly.

Q. Take a road in Illinois that would earn $100,000, or having a large earning capacity that would be used simply to help out a line or a road with a deficient earning capacity would it not, under that system?

A. It would, and for the purpose of determining the value of that road it naturally would be out of place. And right here, I might as well add, that in case I had taken the net earnings of the company as my basis of the distribution of stock values, it naturally would have left these derelict companies or sections of a road without any stock value attached to them whatever, which would be wrong as an abstract principle. But in the figures I have presented, I

212 have given each one of these roads, which have failed to pay their operating expenses, their credit for all the business that they have originated. That was my object in wiping out the net earnings.

Q. You have spoken several times about double tracks in Illinois do you not know that they have miles of quadruple tracks?

A. Oh, yes, I just mentioned that as strengthening the position that it was improper to divide the mileage into the value of the road.

Q. If you wanted to get at the value of the railroad proper in the State of Nebraska, by considering or using the stocks and bonds of the company, would you not have to deduct first all property not connected with the right of way?

A. I would, and I have done so.

Q. The earnings which have been given in the report, represent the earnings upon all property held by the company of every character and kind?

A. It does.

Q. Now in your testimony about the franchise, you have refer-

ence to the rights granted by the state to individuals to incorporate, construct, own and operate a railroad?

A. Yes sir.

Q. And that right is open and free to anybody that desires to incorporate?

A. Yes sir.

Q. Upon the payment of the necessary fees to the State?

A. Yes, sir, a company could incorporate and receive the right to duplicate the Burlington system for the amount I have mentioned.

Q. So that a mere franchise such as is granted by the
213 State may be acquired at such cost as to be of no importance whatever in determining the value of the road?

A. Yes sir.

Q. When the road is constructed and in operation and its business established, then there is a sort of a name and a good will that goes along with the road?

A. It follows any business.

Q. No more railroad than any other?

A. No sir.

Q. Now these things franchise and good will and business standing are intangible things?

A. They are.

Q. And if they are to be valued as property, they are to be considered in connection with the tangible properties are they not, and with the earning capacity of the road?

A. Without a doubt.

Q. In fixing the value of the intangible properties so called, in Nebraska, would they be increased or in any way affected—should they be in any way affected by the values of the intangible properties in Iowa, Illinois or the several other states in which the system is located?

A. There is but small intangible property owned by the C. B. & Q. Railroad, while the stock as I have figured it is figured at $200 a share, most of this value to the stock of the company is brought about by their ownership of over 2000 miles of railroad on which no written mortgage or stock exists.

The Attorney General: Of stock, you mean to say.

A. Yes sir. Over 76 per cent. of that $100 extra per share is thus represented by definite and known property on which the
214 company could realize if they so desired. The issues of stock by the C. B. & Q. Company of Iowa, and their predecessors of Illinois at several meetings and at different times, have authorized increased issues of these companies of stock, and with that increased money derived from the sale of that stock, have built vast mileage in the West, and it is through this ownership of real railroad property that has placed 76 per cent. of the apparent non intrinsic value in the C. B. & Q. stock, so that there is a very small portion of intangible values represented in $200 a share. It would not amount to $100 a mile in the State of Nebraska.

Q. In the report of the Company at page 13, Exhibit 1, the miles of second track are given at 479.54 miles?

A. Yes.

Q. State where it is located with reference to the State of Nebraska, if you know?

A. Practically all out of the State of Nebraska, 4.68 miles or some small mileage is in this state.

Q. Colonel, in what does the earnings of the Burlington line—in what territory does it originate in Nebraska—in what part of Nebraska?

A. All over the State.

Q. But where is the bulk of it? In the western part or the eastern part?

A. In the eastern part of the state.

Q. Could you give about how many miles from the river?

A. Oh, assuming that it is about 200 miles west of the river.

Q. So that the lines in Nebraska which have been segre-
215 gated and assessed by the Board, that are in the eastern part of the State, would have a greater business than those in the western part of the State?

A. Practically three times as much.

Witness excused.

With the Constructive Mileage Considered and Figured in, the Most Extravagant Value under Stock & Bond Theory Would Be

	Bond.	Stock.	Total.	Assessed.	Excess.
A & N	799,500	3,381,502.41	4,181,002.41	5,402,000	1,220,997.59
B & M	2,464,150	9,157,994.84	11,622,144.84	14,821,030	3,198,885.16
C N & K	89,600	15,414.25	105,014.25	132,000	26,985.75
G I & W C	4,861,300	9,132,946.68	13,994,246.68	11,454,300	2,539,946.68
K C & O	617,000	504,816.68	1,121,816.68	4,827,000	3,705,183.32
L & B H	2,722,500	739,884.48	3,462,384.48	4,816,775	1,354,390.52
L & N W	553,000	341,040.41	894,040.41	2,388,425	1,494,384.59
Neb. R. R	1,745,600	2,824,662.41	4,570,262.41	5,469,600	899,337.59
Neb. & Colo	7,307,000	4,007,706.56	11,314,706.56	12,921,300	1,606,593.44
N W & W	450,000	940,269.65	1,390,269.65	3,167,775	1,777,505.35
O & N P	1,370,450	1,807,321.51	3,177,771.51	3,450,575	672,803.49
O & S W	619,000	1,329,479.58	1,948,479.58	2,339,610	391,130.42
Ox & Kan	1,011,000	173,410.38	1,184,410.38	1,192,200	7,789.62
Rep. Val	6,565,650	13,422,890.19	19,989,540.19	27,609,000	7,619,459.81
R V & W	834,150	59,730.24	893,880.24	983,400	89,519.76
R V K & S W	144,200	21,194.61	165,394.61	170,000	4,605.39
	$32,154,100	$47,861,264.88	$80,015,364.88	$101,184,990	$23,709,571.80
				80,015,364.88	2,539,946.68
				$21,169,625.12	$21,169,625.12

217 STATEMENT No. 3.

References—Nebraska Bonds.

See Summary Bonded Debt	Annual Report 1903, Page	26, 27	
" Details C B & Q Nebraska Extension Bonds	"	"	31, 32

Miles Mortgaged	Hastings to Aurora	27.75		
"	Grand Island to Alliance	269.60		
"	De Witt to West Line	298.32		
"	Fairmont to Chester	45.19		
"	Edgar to Superior	26.53		
"	Kenesaw to Oxford via Holdrege	60.67		
"	Omaha via Ashland to Schuyler	80.78		
"	Central City to Ericson	62.94		
"	Palmer to Arcadia	54.02		
"	Greeley Center to Burwell	40.92		
"	Orleans to State Line	59.60		
"	Odell to State Line	5.28		
"	Republican City to State Line	8.50		
"	Culbertson to Imperial	49.17		
	Miles in Nebraska	1,089.27		
See Details C B & Q Denver Extension Bonds			"	30
Miles Mortgaged	West Line Red Willow County to State Line.	72.60		
"	Nemaha to Beatrice	65.20		
"	Nemaha to Salem	17.60		
"	Table Rock to Wymore	39.23		
"	$540,000 Republican Valley Bonds, Chester to Lester.	45.00		
		239.63		
See Details B & M Con. Sinking Fund Bonds			"	34
Miles Mortgaged	Bridge to Kearney	191.61		
"	Omaha to Oreapolis	16.84		
"	Crete to Beatrice	30.09		
"	Nemaha to York	135.74		
"	Hastings to West Line Franklin County	76.81		
"	Aurora to York	21.68		
"	" to Central City	19.63		
"	" to Grand Island	18.51		
"	Beatrice to Chester (Less 12.71 in Kan.)	57.87		
		568.78		
See Details Republican Valley Bonds Miles		89.9	"	35
" "	A & N Bonds "	108.04	"	36
" "	Lincoln & N. W. R. R. "	73.49	"	36

218 *Remarks Accompanying Statement Bonded Debt.*

The figures presented in this statement gives in detail the amount of Bonded Debt outstanding on the whole System, and the proportion of such debt which has been raised on the B & M proportion in Nebraska.

In the issue of C B & Q Sinking Fund 4–s of 1922 (Denver Extension) in addition to using 194.63 Miles of the Republican Valley Railroad which was specifically placed back of the Denver Extension

Bonds, an additional bonded security amounting to $540,000 was set apart to secure the mortgage, this was the proportion allowed from the Republican Valley Railroad mortgage back of 45 Miles of road, and in my map I use 45 miles between Chester and Lester as being security for this part of the Denver Extension bonded indebtedness. The other 130.40 Miles of Republican Valley mortgage mentioned in this division is placed back of the B & M in Nebraska Con 6–s as expressed in the Mortgage.

The other figures presented in this statement are made by pro-rating the mortgage indebtedness in accordance with the mileage mortgages.

The figures in the aggregate, however, show the entire bonded indebtedness outstanding on the C. B. & Q. R. R. holdings in Nebraska on June 30th, 1903.

219 *Remarks Accompanying Statement.*

This statement is compiled from the figures obtained in statement number one, only this is so arranged as to show the amounts per mile of bonded indebtedness that have been issued in each of the several states or subdivisions of the railroad.

In all of the bonded indebtedness of the C B & Q R. R. with the exception of three issues of bonds known as the bonds of 1921 of the C B & Q R R, the C B & Q plain bonds and the B & M Sinking Fund bonds, there is an express provision in the bond relating to the mortgage on definite pieces of road.

The Sinking Fund bonds of 1921, of which there are now $2,717,000.00 outstanding, were issued by the C B & Q R R Co., entirely independent of the B & M properties. So were the $9,000,000.00 plain bonds outstanding of that company, and these two classes of bonds have been divided between the Illinois and Iowa portions of the road in proportion to the mileage bonded through these instruments.

The B & M Sinking Fund bonds, of which there are $1,414,000.00 outstanding, I have placed all as against the railroad in Nebraska, although it is a B & M Mortgage, but I have done so to prevent any possible controversy or intimation that we were segregating any of the bonded debts from the Nebraska properties that are properly chargeable to it.

220 STATEMENT No. 2.

Statement Showing Bonds Outstanding June 30th, 1903.

Amount Issued in Geographical Divisions and Amount per Mile on Different Sections of the C B & Q Systems.

Mortgage East of Mississippi River.

Con. Mortgage	20,511,200
48% of Bonds 1921	1,304.150
48% Plain Bonds	4,320,000
Convertible Bonds	303,700
Chi. & Iowa Div. Bds	2,320,000
Ill. Div. 3½	41,060,000

$69,819,050 on 1,651.39 Miles = $42,280 per M.

Mortgage, Iowa & Missouri Division.

(43.33 M.)	Con. Mtg. Bonds	1,188,000
	Iowa Div. Bonds	10,727,000
	52% S. F. Bonds 1921	1,412,850
	52% Plain Bonds	4,680,000
	Tarkio Valley Bonds	177,000
	Nodaway " "	102,000
(3.68 M.)	Pac. Jun. to River:	
	Denver Ex. Bonds	47,500
	H. St. J. R. R	8,000,000
	K. C. St. J. & C. B.	5,000,000

$31,334,350 on 2,379.91 Miles = $13,117 per Mile

Mortgage, Nebraska Roads.

Denver Ex. Bonds	2,970,000
Nebraska Ex.	18,479,500
B & M S. F. Con.	7,314,500
" "	1,414,000
Rep. Val. S. F. Bonds	623,600
A & N	799,500
L & N W.	553,000

$32,154,100 on 2,611.10 Miles = $12,310 per Mile

Mortgage, Other States West of Missouri River.

Denver Ex. Bonds	2,173,300
Nebraska Ex. "	6,493,500
B & M Con. Mtg.	161,600
A & N.	275,900

$9,104,300 on 1,470.37 Miles = $6,200 per Mile

Total Mortgage and Bonds outstanding $142,411,800 on 8,112.77 M. = $17,555 per Mile.

221 In the foregoing statement the various Mortgages that have been given to secure the Bonds issued by the C B & Q R R Co., and the B & M R. R., the Republican Valley R. R., H & St. J., K. C. St. J & C B R R, Tarkio Valley & Nodaway R. R., Atchison & Nebraska, and Lincoln & Northwestern R. R., are located and assigned the portions of the road specified in the Mortgage.

The Bonds without mileage mentioned in the mortgage are charged to the portions of the road responsible. In Nebraska there are $1,414,000.00 Sinking Fund Bonds issued with no mileage mortgage for their security, but the guarantee of the C B & Q R R, is back of the issue. This statement shows *all* of the Bonded Indebtedness outstanding on the Nebraska lines on June 30th, 1903.

STATEMENT No. 1.

Statement Showing Bonds Outstanding, Miles Mortgaged on System, Miles, Amount of Bonds, and Amount per Mile in Nebraska.

	Sinking fund b'ds outst'g.			Due.	M'l's m't'g.	Miles E. Mo. R.	Miles in Nebr.	Miles Ks. West.	Bonds on Nebr. R. R.	Per M.
Total bonds	156,050,900	13,659,100	142,411,800							
C B & Q, con. m't'g bonds	21,699,200		21,699,200	July 1, 1905	826.73	826.73				
" Iowa Div	10,727,000		10,727,000	Oct. 1, 1919	901.25	901.25				
" sinking fund bonds	4,300,000	1,583,000	2,717,000	Sep. 1, 1921						
" " (Denver Ex.)	7,968,000	2,824,700	5,143,300	Feb. 1, 1922	414.52		239.63	174.89	2,970,000	$12,400
" plain bonds	9,000,000		9,000,000	May 1, 1913						
" Nebr. Ex	25,627,000	654,000	24,973,000	May 1, 1927	1,472.06		1,089.27	382 79	18,479,500	16,965
" convertible	303,700		303,700	Due paid.						
" Chi. & Iowa Div	2,320,000		2,320,000	Feb. 1, 1905	121.48	121.48				
" Ill. Div	41,060,000		41,060,000	July 1, 1949	743.91	743.91				
B & M con. m't'g S. F. bonds	13,561,000	6,037,400	7,523,600	July 1, 1918	585.17	3.68	568.78	12.71	7,314,500	12,860
" "	3,347,000	1,933,000	1,414,000	Jan. 1, 1910					1,414,000	
Rep. Val. S. F. bonds	1,078,000	454,400	623,600	July 1, 1919	89.90		89.90		623,600	6,930
H & St. J	8,000,000		8,000,000	Mar. 1, 1911	289.22	289.22				
K C St. J & C B	5,000,000		5,000,000	Jan. 1, 1907	249.77	249.77				
Tarkio Valley	177,000		177,000	June 1, 1920	29.54	29.54				
Nodaway Valley	158,000	56,000	102,000	June 1, 1920	31.54	31.54				
A & N (guarantee)	1,125,000	49,000	1,075,400	M'ch 1, 1908	144.95		108.04	36.91	799,500	7,400
L & N W	600,000	47,000	553,000	Jan. 1, 1910	73.49		73.49		553,000	7,500
	$156,050,900	13,639,100	142,411,800		5,973.53	3,197.12	2,169.11	607.30	32,154,100	12,310
				Not mortgaged	2,139.24		442.36			
					8,112.77		2,611.47			

No mortgage on K. C. & O	193.08	
L. & B. A	13.73	Arcadia to Sargent.
N. W. & W	140.79	
G. I. & W. C	89.90	Alliance to State Line.
Ft. Crook branch	4.86	
	442.36	

223 At Bottom of Statement No. 1.

It is evident from the foregoing statement that there *is* 2,139.24 miles of the road on which no written mortgage is made and which by right belongs to the stockholders free of all incumbrances, except the three small issues of bonds hereafter specified.

In Nebraska there are 442.36 miles not mortgaged directly, but there is an issue of sinking fund Bonds of which $1,414,000 is still outstanding which places this unmortgaged railroad in Nebraska under cloud to such an extent as would be necessary to secure payment under that obligation.

While it is a B & M issue of Bonds I allow all to be charged up against Nebraska Railroads so that no controversy can be had regarding a proper proportion in a distribution.

STATEMENT No. 3.

Statement Showing the Value of the B & M Holdings of the C B & Q Company in Nebraska if Value Were to be Proportioned in Accordance with the Value of Bonds Outstanding, and Stock Figured at $200.00 per Share, the Highest Quotation.

	Miles.	Bonded debt.	%	Stock, R. R. value.	Bond & stock.	Total val. per mile.
East of Mo. River	1,651.39	69,819,050	.491	94,604,996	164,424,046	99,566
Iowa & Missouri	2,379.91	31,334,350	.22	42,389,204	73,723,554	30,976
Nebraska	2,611.10	32,154,100	.226	43,545,273	75,689,873	28,989
Other Western States	1,470.37	9,104,300	.063	12,138,727	21,252,527	14,454
	8,112.77	$142,411,800	1.000	$192,678,200	$335,090,000	$41,179
Property owned on which taxes paid				29,000,000	29,000,000	
Total value stock @ $200.00				$221,678,200	$364,090,000	

225 *Remarks in Regard to Statement Number Three.*

As this controversy is taking shape it may require a possible meeting of the argument, that railroad values should be based on stock and bond issues. I have prepared this statement with a view of presenting the facts in the case which it is evident the court would wish to consider in such an emergency.

There is no possible and more positive way of determining what the true value of a corporation's property such as the C. B. & Q. R. R. owns in Nebraska than to find out what the owners of the property and investors consider its value to be. The safest and most convincing set of figures that can be given in regard to this feature is to show the amount of money which has been borrowed upon the different portions of the road as this is almost conclusive, both in regard to the ideas of value, obtained by financiers and the value of physical property. Mr. Rosewater himself acknowledged that not over 50% of the true value could be borrowed.

Having found the proportions in which the mortgages have been issued by the road, I have in this statement assumed, for the purpose of completing the argument, that the stock of the C. B. & Q. R. R. could be figured at $200.00 per share.

As this is a controversy in regard to the payment of tax and as there is $29,000,000.00 worth of property which is not used as railroad property, but is owned by stockholders of the company, and on which property taxes have been paid at local points it is eliminated from that gross value of the stock, which would be obtained if figured at $200.00 per share. This sum leaves $192,678,200.00 as the "railroad" value of the stock figured at this price, and I have
226 divided the stock values in accordance with the money borrowed on the different portions of the road. It can be seen the result is that the railroads in Nebraska, even though figured at the highest rate that C. B. & Q. stock has been quoted, could not be considered as over a valuation of $28,998.00 per mile.

While this is a theoretical value, it proves that there is no possible way which the railroad in Nebraska could be considered as being more than the value expressed per mile: This amount is still a liberal figure from the fact that it represents a sum considerably in excess of what the road could be reproduced for.

Statement No. 4.

Statement Showing Interest Paid on Bonded Debt on Nebraska Railroads Belonging to the C B & Q Company in 1903, Rate, and Amount per Mile.

In Nebraska.	Denver Ex. Bonds.....	$2,970,000	@ 4 % due 1922 year interest..	$118,800	
	Nebraska Ex.....	18,479,500	@ 4 % " 1927 " "	739,180	
	B & M in Nebr. Cor....	7,314,500	@ 7 % " 1918 " "	512,015	
	" " " S. F...	1,414,000	@ 4 % " 1910 " "	56,500	
	Rep. Val. R. R. Mtg.....	623,600	@ 7 % " 1907 " "	43,652	
	A & N.....	799,500	@ 7 % " 1908 " "	55,965	
	L & N W.....	553,000	@ 7 % " 1910 " "	37,710	
		$32,154,100		$1,563,822	4 86-100 % or $598.94 per mile.
	Tax paid.....			500,063.88	
	Total fixed charges.....			$2,063,885.88	

228 EXHIBIT No. "4," C. W. P., 1st Page.

If value of stock were estimated from the proportion of gross earnings of the Nebraska roads owned by the C. B. & Q. R. R. for 1903 the following would be the result.

1,108,391 shares of stock in system at $200.00 per share	$221,678,200
Deduct for property owned on which taxes are paid	29,000,000
Stock value created by earning capacity	$192,678,200
Gross earnings of road	$62,638,378.82
Nebraska roads earned (true figures)	13,392,404.21

Nebraska roads earned 21.380 % of the whole.

		Miles earned	Gross earnings.	% of whole.	Proportion of stock value for Nebraska.
A & N	108.04	" "	920,559.77	1.469	$2,830,442.75
B & M	191.61	" "	2,497,482.34	3.987	7,682,079.83
C N & K	5.28	" "	4,710.80	.008	15,414.25
G I & W C	352.44	" "	2,486,604.85	3.970	7,649,324.54
K C & O	193 08	" "	164,135.37	.262	504,816.28
L & B H	176.61	" "	240,831.83	.384	739,884.48
L & N W	73.49	" "	110,632.66	.177	341,040.41
Neb. Ry	136.74	" "	809,208.06	1.291	2,487,475.56
N & C	430.71	" "	1,173,596.00	1.873	3,608,862.68
N W & W	140.79	" "	306,054.67	.488	940,269.65
O & N P	81.19	" "	503,726.23	.807	1,554,913.48
O & S W	51.79	" "	384,491.06	.612	1,179,190.58
Ox. & K	59.61	" "	56,239.11	.090	173,410.38
R V	552.18	" "	3,707,339.24	5.920	11,406,549.44
R V & W	49.17	" "	19,771.57	.031	59,730.24
R V K & SW	8.50	" "	7,020.62	.011	21,194.61
	2,611.23		$13,392,404.21	21.380	$41,194,599.16

229 EXHIBIT No. 4, C. W. P., 2nd Page.

Stock and Bond Value, C. B. & Q., in Nebraska.

	Outstanding bonds.	Stock value credited Nebraska roads.	Stock and bond value.
A & N	799,500	2,830,442.75	3,629,942.75
B & M	2,464,150	7,682,079.83	10,146,229.83
C N & K	89,600	15,414.25	105,014.25
G. I. & W C	4,861,300	7,649,324.54	12,510,624.54
K C & O	617,000	504,816.28	1,121,816.28
L & B H	2,722,500	739,884.48	3,462,384.48
L & N W	553,000	341,040.41	894,040.41
Neb. R. R	1,745,600	2,487,475.56	4,233,075.56
N & C	7,307,000	3,608,862.68	10,915,862.68
N W & W	450,000	940,269.65	1,390,269.65
O & N P	1,370,450	1,554,913.48	2,925,363.48
O & S W	619,000	1,179,190.58	1,798,190.58
O & K	1,011,000	173,410.38	1,184.410.38
R V	6,565,650	11,406,549.44	17,972,199.44
R V & W	834,150	59,730.24	893,880.24
R V K & S W	144,200	21,194.61	165,394.61
	$32,154,100	$41,194,599.16	$73,348,699.16

Average value per mile $28,090.00 taking stock & bonds as a basis.

230 EXHIBIT No. "4," C. W. P., 3rd Page.

Under stock & bond values the assessment is as follows:

	Stock & bond value.	Assessed.	Excess.
A & N.....	3,629,942.75	5,402,000	1,772,057.25
B & M.....	10,146,229.83	14,821,030	4,674,800.17
C N & K.....	105,014.25	132,000	26,985.75
G I & W C.....	12,510,624.54	11,454,300	1,056,324.54
K C & O.....	1,121,816.28	4,827,000	3,705,183.72
L & B H.....	3,462,384.48	4,856,775	1,394,390.52
L & N W.....	894,040.41	2,388,425	1,494,384.59
Nebr. R R.....	4,233,075 56	5,469,600	1,236,524.44
N & C.....	10,915,862.68	12,921,300	2,005,437.32
N W & W.....	1,390,269.65	3,167,775	1,777,505.35
O & N P.....	2,925,363.48	3,450,575	525,211.52
O & S W.....	1,798,190.58	2,339,610	541,419.42
O & K.....	1,184,410.38	1,192,200	7,789.62
R V.....	17,972,199.44	27,609,000	9,636,800.56
R V & W.....	893,880 24	983,400	89,519.76
R V K & S W.....	165,394.61	170,000	4,605.39
	$73,348,699.16	101,184,990	28,892,615.38
		73,348,699.16	1,056,324.54
Excess Assessment.....		$27,836,290.84	$27,836,290.84

231 A distribution of value estimated on proportion of earning capacity of the road is as follows:

Gross earnings of System 1903, $62,638,378.82. The accounts of the C. B. & Q. Company show the Gross Earnings in Nebraska to be $15,562,600.81, or 24.84% of the whole.

If this were used as a basis to determine the value of the stock (the Bonds being definitely known to be $32,154,100.00) it would show that $47,861,264.88 of the stock value would be a credit derived from Nebraska business, and that the assessment was $21,169,625.21 too high if stock and bond values had been used as an estimate.

However the gross earnings of the Nebraska roads instead of being $15,562,600.81 as credited in the accounts of the Company is but $13,392,404.21, through an error in crediting to Nebraska roads a constructive mileage of 1.4 miles on all business west of the river.

If the "Inter-State Traffic" portion of this credit is eliminated and it certainly should be, if it is to be considered in determining value for taxation in Nebraska, but 21.380 of the Gross earnings should be considered, and this would make the apparent stock value but $41,194,599.16, which being added to the Bonds outstanding in Nebraska makes the Stock & Bond value but $73,348,699.16 and the assessment is $27,836,290.84 too high.

232 DISTRICT OF NEBRASKA, *ss:*

I, Charles W. Pearsall, Examiner, hereby certify that the foregoing testimony in the above entitled cause was taken before me at the times and places in the record thereof indicated; that before testifying each of the several witnesses was by me severally duly sworn to tell the truth, the whole truth and nothing but the truth; that said testimony was taken in shorthand by myself, and by myself transcribed as hereinbefore set forth, and that by consent of parties the signature of each of said witnesses to their respective depositions as so extended was waived.

CHARLES W. PEARSALL, *Examiner.*

Endorsed: Filed Dec. 27, 1905. Geo. H. Thummel, Clerk.

233 Thereupon afterwards, to-wit: On the 27th day of December, 1905, volume No. 2 of testimony taken — behalf of Complainant and respondents, was filed in said cause, which said Testimony is in words and figures following, to-wit:

In the Circuit Court of the United States Within and for the District of Nebraska.

No. 80. Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Defendants.

Testimony taken on behalf of the complainant, Chicago, Burlington & Quincy Railway Company; also testimony taken on behalf of respondents, F. C. Babcock, as Treasurer of Adams County, Nebraska, *et al.*, under the sixty-seventh rule of the Supreme Court, as amended, pursuant to agreement between the parties hereto, beginning July 24th, 1905, at 9:30 o'clock A. M., at Room No. 711, New York Life Building, in the City of Omaha, Douglas County, Nebraska, before me, Charles W. Pearsall, an Examiner in Chancery of the United States Circuit Court for the District of Nebraska.

Present: Charles J. Greene, Esq., James E. Kelby, Esq., Solicitors for Complainants. Norris Brown, Attorney General. W. W. Slabaugh, County Attorney, Douglas Co. Solicitors for Respondents.

It is hereby stipulated and agreed that the testimony may be taken in shorthand by Charles W. Pearsall, the Examiner before whom this testimony is being taken, and by him extended into longhand.

234 Mr. HARRY D. REED, a witness on behalf of the respondents is here called and sworn. Being examined in chief by Attorney General Norris Brown, he testified as follows:

Q. You may state your name, age and residence.
A. Harry D. Reed; age 44 years; residence, Omaha, Douglas county, Nebraska.
Q. How long have you resided in Omaha?
A. 28 years.
Q. What official position do you hold at the present time?
A. County Assessor of Douglas County.
Q. When were you elected County Assessor?
A. In the Fall of 1903.
Q. When did you enter upon your official duties as County Assessor?
A. In the early part of January, 1904.
Q. Have you been the acting County Assessor of Douglas County ever since that time?
A. I have.
Q. Do you remember about how many deputies you had in 1904?
A. In 1904, about 62 or 63 deputies.
Q. How were they selected by your recommendation and the approval of the County Board?
A. They were.
Q. What instruction, if any, did you give them as County Assessor, with reference to assessing property in Douglas County that year?
A. That everything was to be assessed at its full value. I will qualify that—its full value which was divided by five for the purposes of assessment.
235 Q. But it was to be listed at its full value?
A. Yes, listed at its full value.
Q. Was there any understanding between them and you that any property assessed that year should be undervalued, valued for less than it was worth, listed for less than it was worth?
A. There was no understanding that anything was to be undervalued.
Q. Was there any agreement between you and them that property should be listed for less than you thought it was worth that year?
A. There was none.
Q. Was there any custom followed by you or them that year in undervaluing property.

The complainant objects to this as incompetent and immaterial, for the reason that you can hardly establish a custom or usage at the beginning of the term, at least.

A. There was no custom followed at all in the 1904 assessment.
Q. Was there any resolution or rule adopted or passed or followed by you and your deputies in the assessment of property for that year, intended for the undervaluation of the property you assessed?
A. There was none.

Q. Now you may state whether or not, as a matter of fact, the property assessed that year in Douglas County was listed for assessment at its full actual value in your judgment?

A. It was.

Q. What was the valuation with respect to its being a full
236 or a partial valuation of lands assessed by you that year in this county?

A. It was a full valuation of lands in this county.

Q. What with respect to live stock?

A. A full valuation of live stock.

Q. What with respect to grains?

A. It was a full valuation of grains.

Q. What with respect to notes and mortgages?

A. It was a full valuation of notes and mortgages, as far as we were able to locate them.

Q. You endeavored to locate all the property that was in the county, didn't you?

A. I did.

Q. There was no property escaped taxation that year by any intention on your part?

A. None whatever.

Q. Now then, Mr. Assessor—Mr. Witness, did you report to the County Board of Equalization of Douglas County your assessment for that year?

A. I did.

Q. You were a member of that Board were you?

A. I was.

Q. Did the County Board of Equalization of Douglas County convene that year as such Board?

A. They did.

Q. Were you present at its meetings?

A. I was.

Q. Did it, or did it not, consider and discuss values of property that you had assessed?

237 A. It did.

Q. Did it hear and determine complaints with respect to those values?

A. It did.

Q. When the county board of equalization adjourned, did you report the results of its labors and your assessments to the State Board of Equalization and Assessments?

A. I did.

Q. Have you a copy of that report with you?

A. I have got it in the office.

Q. Will you produce it later?

A. I will.

Note by the Examiner.—"When produced, the above report will be marked and hereafter known in this proceeding as Respondents' Exhibit No. 1"

Q. Were you present at any of the meetings of the State Board of Equalization and Assessment in the year 1904, when the values of

property fixed and assessed by you and the County Board of Equalization of Douglas County were being discussed and considered by the State Board?

A. I was.

Q. At those times, were the valuations of both real and personal property in this county, as returned by you under consideration and discussion by the State Board of Equalization and Assessment?

A. They were.

Q. How many times were you down there attending these meetings that year?

A. Five or six times.

238 Q. Was testimony taken before that Board with respect to valuations of property in this county?

A. There was no testimony taken except the statements of the Assessor to the Board.

Q. And of other persons besides the Assessor?

A. I think one day Mr. Ure and Mr. Rosewater made some statements on the line of the general assessment.

Q. That was as to the valuations that had been fixed by you?

A. Yes sir.

Q. Do you know, as a matter of fact, Mr. Witness, whether or not the State Board of Equalization and Assessments changed those valuations?

A. They didn't make any change in the valuations as returned.

The ATTORNEY GENERAL: We offer that statement, being the Respondents' Exhibit 1, heretofore referred to in evidence, it having at this time been produced by the witness.

Q. What experience have you had, Mr. Witness, in real estate in this County?

A. I have been in the real estate business ever since I have been here, for 28 years.

Q. You were acquainted in 1904, you think with the values generally of real estate in this county?

A. I was.

Cross-examination.

By C. J. GREENE, Esq.:

Q. Mr. Reed, do you know how many acres of land there are in Douglas County?

A. The report shows, but I think it is something like

239 180,000. If you will look at the bottom part there you will see it; that is what land is outside of the city limits of Omaha and South Omaha.

Q. $181,912.32?

A. Yes sir.

Q. Now your average valuation on this land was the valuation of improved land?

A. It was a little less than $65.00 an acre, I think.

Q. Little less than $65 an acre?

A. $12.86 is one-fifth of $64 or $65, something like that.

Q. That, you would say from your experience, was a fair average value of lands in Douglas County, outside of these cities?

A. I would.

Q. Do you know of any lands in Douglas County that are worth less that $60 an acre?

A. I do.

Q. I mean improved lands?

A. I do.

Q. Now, where are they?

A. There is a strip of country along the Elkhorn River about three miles wide, some places four or five miles wide, extending from the North line of the county to the South line.

Q. Just say the distance right there.

A. That would be 14 miles. That is worth considerably less than $60 an acre. There is another strip between the Union Pacific Railroad and the Platte River, along the southwest line of the county that is from one to three miles wide that is worth a great deal less than $60. There is a good deal of land in East Omaha precinct that was under four or five feet of water the other day that
240 is worth $10 or $15 an acre, and there is a lot of land on the east side of the present channel of the Missouri River in Florence Precinct, where James L. Paxton has his ranch, that is in this county, that is worth a great deal less than $60 an acre, and there is a number of other pieces of land at different places, poor pieces of land, that are not worth $60 an acre.

Q. Did you ever make an estimate of about how many acres in the aggregate?

A. I did not.

Q. Could you?

A. I say I did not.

Q. I say could you do it?

A. I could not, approximately. No, I don't think I could, offhand.

Q. What would you say would be the fair value of these lands which you have mentioned?

A. Well, it would be hard to average them. Some of these lands are worth as low as $10 an acre, and from that all the way up to $60.

Q. Which are the cheapest? Where are the lands which you say are the cheapest?

A. I would think the poorest lands were the sandbar accretion propositions in the east end of East Omaha precinct.

Q. But that only includes a few acres?

A. There are several hundred acres in that precinct in that condition.

Q. Well, would you say there were several hundred or a couple of hundred?

A. I would not care to make any closer estimate than several hundred acres.

241 Q. All that land there is sort of speculative land, isn't it—land for speculative purposes?

A. Well, it is land carried on the tax rolls and land, but just what it is——

Q. Well, in getting at its value, its value is largely a matter of speculation, isn't it?

A. Well, it has a value, in my opinion of $10 or $15 an acre.

Q. How far is it from the court house in Omaha?

A. About five miles.

Q. That is the extreme portion of it?

A. The extreme portion of it possibly a little over 5 miles.

Q. Isn't it, the bulk of it—within the three mile circle?

A. It is not.

Q. Four mile circle?

A. Well, about four or five miles.

Q. It is in the locality of the lands that were laid out by East Omaha into lots and blocks?

A. It is northeast of the land laid out as lots and blocks.

Q. Accretions to that land?

A. Mostly accretions.

Q. Formed in recent years?

A. This part particularly that you speak of, I don't know just when it was formed.

Q. Now, of course, it isn't farm land?

A. I wouldn't call it farm land.

Q. A great deal of property in East Omaha, within a short distance of these lands has been held at $500 to $1000 an acre, hasn't it?

242 A. Well, I think during the boom period there was some of the land that was held at a high price. I don't think there was any held at $500 a- acre in the vicinity of this land I speak of.

Q. Now, where are the most valuable lands of this class of property that you have described?

A. The most valuable lands are on the west line of the city.

Q. No; I don't mean that. The land you speak of as being cheap land, where are the less valuable of this class of lands, which is along the Elkhorn?

A. These lands I have described are all of the lands under $60 an acre. Land along the Elkhorn, some of it would range up nearly to $60 an acre, and from that down perhaps to $20 an acre, or $15.

Q. Well, the lands that would range from $15 to $20 an acre are relatively smaller in quantity than those which average from $40 to $60?

A. I can't make an estimate of those that run at $15 to $20 an acre. I know there is some along the Elkhorn that is very poor, is assessed at the lower figure.

Q. But relatively, to what extent?

A. Well, I can't make an estimate of the number of acres that are assessed at $15 to $20 an acre.

Q. Well, would you say any per cent., in a general way—ten per cent. of it, or five per cent. of it, or what?

A. I can't make an estimate of the number of acres of land that is assessed at the lower figure.

Q. Do you know where the west half of the southwest quarter of 5-16-9 is located?

243 A. I do.

Q. Comprising 77½ acres, about?

A. It is on the county line, and probably a short eighty.

Q. Now, do you know whether or not that was sold February 24, 1904, and the deed recorded February 26th, 1904?

The respondent- objects to this as being immaterial and irrelevant.

A. I have no knowledge of the sale.

Q. (Handing witness Plaintiff's Exhibit No. 5.) This is a transcript and I will hand it to you. I will ask you to take that first, referring to these lands, and state what the consideration was, as appears upon the books, providing this is correct—providing that this statement I show you is correct.

(Question withdrawn.)

It is here stipulated by the defendants that plaintiff's Exhibit No. 5 is a correct copy of the records of the office of the Register of Deeds of Douglas County, Nebraska, and a correct copy of the Assessor's books, so far as it relates to the assessment of the lands described in the Exhibit. But said defendants, and each of them, object to the introduction of the Exhibit, on the ground that it is irrelevant, immaterial and incompetent, but not because it is not the best evidence.

Q. I will ask you to take Exhibit No. 1, and state whether or not the valuations as appear there are correct.

A. I have not the assessment before me and cannot testify.

Q. Well, what do you think? What is your best judgment? You can take and verify it afterwards if you want to.

244 The ATTORNEY GENERAL: I have admitted that this is a correct copy of his books. What do you want to ask him if it is for?

Mr. GREENE: Well, this is just preliminary. If he don't know, it is all right.

A. I don't remember the detailed figures on any piece of land out there.

Q. What would you say the tract referred to—the 77 acre tract above referred to was actually worth in 1904?

A. I can't testify to a personal knowledge of the tract of land.

Q. Have you any idea of the value of the west half of the northeast quarter of 9-16-11 per acre.

A. I will answer that the same as the other, that I can't testify to a personal knowledge.

Q. Will you look over Exhibit 5 and see if there are any entries that you are familiar with either the land or the value of them?

A. I am familiar in a general way with all the land in the county, but I don't remember the location of any particular piece of land that you have on this list.

Q. Could you give your opinion as to the value of any of the land on the list?

A. I can't from the numbers only.

Q. Do the numbers indicate to you about the location of the land in the body of the county?

A. They indicate by precinct, in a general way.

Q. You don't know just where then any of these lands listed here are located with reference to the surrounding lands?

A. I don't know it close enough to make an estimate of value.

245 Q. Could you inform yourself about that, so that you could give us your idea of their value?

A. I can't without going to see the lands.

Q. Do you not know some of these lands personally when you come to look them up in the office?

A. There might be some pieces of land I had been on and would know by the numbers, but from the numbers there, I don't recall any of them.

Q. Well, what do you say—what are the most valuable lands in the county outside of the cities you have named?

A. The most valuable lands are in Dundee and Benson precincts, adjoining the city limits on the west.

Q. What are they worth an acre?

The respondents object to this as being immaterial and irrelevant.

Q. I mean what were they worth in 1904?

The respondents object to this as being immaterial and irrelevant.

A. Well, there was some land that might be worth $200, $250 or $300 per acre.

Q. Can you buy any land in Dundee for that?

A. Yes.

Q. What would you say the land that is owned—the 40 acre tract owned by Lewis Reed, at the corner of Dodge and 48th streets, the Southwest corner, is worth an acre?

A. I would estimate that between $300 and $400 an acre.

Q. That would be your estimate of it for taxation, the full value for taxation?

A. If I was going to make figures for taxation, I would
246 go over the land carefully and make an estimate. Off-hand I would not care to make it any closer than $300 to $400 an acre. I know the piece in a general way, and it is very rough. Some of it is 50 feet above grade and some of it is 100 feet below grade.

Q. The market value of that land there is not for farming purposes, is it?

A. Not for farming purposes.

Q. Its roughness does not affect it one way or the other for the purposes which give it its value?

A. Its roughness interferes with it very seriously as to value.

Q. By roughness, you mean unevenness, that is, above and below grade?

A. Above and below grade.

Q. Be a mere question of expense of moving the dirt from the higher places to the lower, wouldn't it?

A. Well, if you move the dirt from a $50 or $100 lot, you expend the value of the lot moving the dirt.

Q. If it is only worth $100?

A. If it is only worth $100.

Q. You have dealt in real estate a good many years?

A. I have.

Q. Isn't it true that the lands around in Omaha and vicinity that are held for suburban city purposes are not particularly affected by the condition of the land for agricultural purposes, by those conditions which would make it unfit for agricultural purposes?

A. Any real estate is affected by its location and as it lays with regard to grade.

247 Q. Well, let's get back to this particular piece of ground. In what does the value of that land consist?

A. In the prospects of being able to sell it.

Q. Well, I understand that's true generally, but that is too general. I mean what use.

A. For residence purposes, or possibly for a brick yard.

Q. It is a part of the suburb of Dundee, isn't it, practically?

A. It is in Dundee precinct.

Q. Now, right across the street from Dodge, what are lands there worth, per acre?

A. Across the street from Dundee Place, it is all platted as lots, and to reduce it back to an acre proposition, the lands in Dundee Place, as they have been graded and are now located, an estimate on the east part of Dundee would be somewhere from $1500 to $2000 an acre.

Q. How many lots are there in an acre out there?

A. Ordinarily about five lots to the acre.

Q. Well, isn't it true that the lots are selling in Dundee at about $1,000 apiece?

A. I think it would be an exceptional lot and an exceptional man that would sell at $1,000.

Q. What did Mr. Hoagland pay for his?

A. Hoagland bought his about 15 years ago.

Q. Well, what would you say lots are worth, generally, on an average in Dundee, from your knowledge?

A. I would estimate the best lots in Dundee, that lay on that first hill, where it has been graded off at from $350 to $500 each.

248 Q. What is the land worth, for instance, in the neighborhood of Benson? I don't mean right in the immediate vicinity of Benson, but in that general locality?

A. In the direct locality of the Country Club, I would estimate land at from $250 to $400 per acre, depending on the location; further west than that a lower value.

Q. What do you estimate Paxton's farm at, per acre?

Respondents object to this as being immaterial and irrelevant.

Q. I will ask you first, do you know the Paxton farm?
A. Yes; sir; I do.
Q. Where is it located?
A. About a mile west of the village of Benson.
Q. About how far from the Court House in Omaha?
A. About six miles.
Q. On what street does the house front, if the street was extended west past the farm? Is it on the Benson road?
A. It is on what we call the military road. It is on the road that runs directly west from Benson.
Q. Is that improved land?
A. It is farm land; nicely improved.
Q. What is it worth an acre?

Respondents object to this as being immaterial and irrelevant.

A. I would estimate that at between $100 and $125 an acre.
Q. How many acres?
A. I think there are 320 acres.
Q. Do you know the old Paddock farm, where it is located?
A. I know in a general way the old Paddock farm.
Q. Where is it?
A. It is what we used to call out Center Street.
249 Q. How far west of Omaha?
A. Well, something like 8 miles, about.
Q. How many acres are there in that?
A. I don't recall the number of acres.
Q. What is land worth in that locality?

Respondents object to this as immaterial and irrelevant.

A. I would estimate lands in that locality at between $65 and $80 an acre.
Q. Do you know the Cremona Farm, where it is located?
A. Not by that name.
Q. What do you estimate the value of the lands in North of Florence, where Wyman and Learned are located, near Pries lake, and all through there?
A. Florence is so spotted that it is almost impossible to make any general estimate of any piece of land.
Q. Take that territory and the most of the land, that is the majority of the land, is good land isn't it, for farm purposes?
A. There is some of the land that is very rough, and there is some land North of Florence that is what we call a thin soil that don't raise much of anything.
Q. Taking that land as a whole, what would you say it was worth an acre?
A. I can't estimate Florence precinct as a whole. It is very spotted. There is bottom land and accretions across the river, and hills and hollows.
Q. You estimate the county as a whole?
A. Yes sir; I do.
250 Q. Is there any greater variety of land in Florence precinct than there is in the whole county?

A. Florence is different from those precincts to the west.
Q. But Florence is a sort of suburb of Omaha, is it not?
A. Well, the farm land part of Florence is not.
Q. I am asking about the values now.
A. Florence touches Omaha on the North.
Q. Well, it is quite a suburb, isn't it. Quite a number of people building country homes up in that country?
Q. Well, most of the country home proposition is on what we call Florence outlots.
Q. Do you know the Kelby farm?
A. I do.
Q. How many acres in that?
A. Well, 150 or 160 acres.
Q. Where is it located?
A. About a mile and a half northwest of the village of Florence.
Q. Is it on the Fort Calhoun road, or the road west of that?
A. I am not just certain about the roads since they have changed them up in there.
Q. What is that land worth an acre?

Respondents object to this as immaterial and irrelevant.

A. There has been a house built on that Kelby land with which I am not familiar.
Q. Well, assume that house to be worth $1500.
A. Well, I guess it cost more than that. I would estimate the ground, without taking into consideration the buildings at somewhere from $45 to $65 an acre.
251 Q. Well, now, the only building there that would add materially is the residence, isn't it?
A. I haven't seen it since any buildings were put up.
Q. Assume the building cost $2500. How would that affect the value of the farm as a whole?
A. Well, on the ordinary farm, $2500 worth of buildings would not add $2500 to the value of the property.
Q. Would it add $10 an acre to it?
A. Well, that Kelby farm, as I remember it, is not a good farm as a farming farm.
Q. I just want to know what you would add—how much an acre—how much to add to the price of an acre on account of the improvements. Of course, it is your own opinion.
A. I have testified to the value of the plain ground at somewhere from $45 to $65 an acre. I think that is as close as I care to guess at it off-hand. I have not seen the new buildings and am not familiar with them.
Q. Well, assuming that the first cost of the house was $2500, how much would it increase the value of the farm, as a farm?
A. Well; I can't answer that.
Q. Where is the best farming land in Douglas County—what section of the county?
A. In my opinion the nicest section of Douglas County for all purposes is the land to the east and southeast of old Elk City.

Q. And how far is that from Omaha?

A. About 20 miles. That is not the most valuable land, but it is the best farming land that you could get to-day.

Q. What is it worth an acre?

252 Respondents object to this as immaterial and irrelevant.

A. $60 to $65 an acre and some of it $70 possibly.

Q. That gets pretty near the west line of the county, doesn't it?

A. No; that is 5 or 6 miles east of the west line, this is east of the Elkhorn river, over at Elk City.

Q. Are the values, the estimates you have given, a fair illustration of your standard of valuation for the county?

A. Our standard of valuation for the county has been the full value of the property, as near as I can tell it.

Q. I am getting at your judgment. Is that a fair illustration of your judgment upon the various lands in the county?

A. I don't just understand this question.

Mr. GREENE: Well, I will withdraw it and ask another.

Q. Are these values a fair expression of your judgment as to values over the whole county?

Respondents object to this as immaterial and irrelevant.

A. What values that I have been giving.

Q. Well, I have been cross-questioning you here for half an hour about the different lands in different locations.

A. Well, I answered each question at the time.

Q. Yes; but is that a fair index of your opinion of values generally in the county? That is perhaps a better question.

Respondents object to this as being immaterial and irrelevant, and for the further reason that the best index of his opinion as to what the fair value is is in the return of the assessor.

(Question withdrawn.)

253 Q. Mr. Reed, what was the valuation put upon the monies and bank deposits and deposits in this county in 1904?

A. The assessment of the money on hand was $298,292, that is the one-fifth.

Q. That would be how much value?

A. Well, it would be about a million and a half.

Q. Do you know by any reports the amount on hand in January, 1904—of money on deposit in Omaha; that is covering individual deposits?

Respondents object to this as incompetent, irrelevant and immaterial.

A. I do not.

Q. Now, when you came to assess monies, did you consult the figures in the Bankers' Directory of the United States to see what the returns show as on hand at that time?

A. I did not.

Q. How did you ascertain the amount of deposits?

A. We took the returns that the people swore to.

Q. Well, as a matter of fact did the people usually return the amount on deposit, or any amount whatever on deposit?

A. Well, in 1904, we had what was the basis of a million and a half on deposit.

Q. Returned? The great mass of the people don't return, do they any money on hand?

A. Well, there are some people, I think, that don't make a fair return.

Q. Well, do the majority of people make any return whatever?

Respondents object to this as incompetent, irrelevant and immaterial.

254 Q. Well, as a matter of fact, do your returns show deposits by the mass of depositors making those returns?

The respondents object to this as incompetent, irrelevant and immaterial.

A. I would hardly answer by saying that the mass do not, but there are a great many people that answer "none" to the question of money on deposit.

Q. The majority of them?

The respondents object to this as incompetent, irrelevant and immaterial.

A. Well, perhaps not the majority of them, but a great many do.

Q. Do you know what is the published statement from year to year of monies on deposit belonging to individuals in the banks of Omaha?

The respondents object to this as incompetent, irrelevant and immaterial.

A. I have seen such statements at the time they were published, but I do not remember the figures.

Q. In other words, you are as a business man, more or less familiar with bank statements, are you not, that are published?

The respondents object to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Do you not know that from fifteen to sixteen million dollars on deposit would be a fair average for the winter months?

The respondents object to this as incompetent, irrelevant and immaterial.

A. I do not think there is that much taxable money.

255 Q. I am not asking you about the taxable money. The law will determine that. I am asking about money on deposit. Let the statute determine what's taxable money.

The respondents object to this as incompetent, irrelevant and immaterial.

A. I don't know what amount there is.

Q. Can you give any impression about what the deposits amount to in the banks in this city, one time and another, without going into details?

The respondents object to this as incompetent, irrelevant and immaterial.

A. I have an impression as to the total amount of bank deposits.
Q. Well, what is it?

The respondents object to this as incompetent, irrelevant and immaterial.

A. That there is a total of perhaps twenty-five millions of money deposited in the Omaha banks.
Q. Knowing this, or believing this fact, when you go to make the assessment, you accept a return of a million dollars as an equivalent for the full amount of money in the banks on deposit?

The respondents object to this as incompetent, irrelevant and immaterial.

A. We accept what we can get.
Q. Do you know, in a general way, what the returns, or what the published statements show as to the bank deposits of individuals in the banks of the state amount to?

The respondents object to this as incompetent, irrelevant and immaterial.

256 A. Well, the individual deposits, perhaps, to guess at it, I would say twelve or fifteen million dollars.
Q. In the whole state I mean?

The respondents object to this as incompetent, irrelevant and immaterial.

A. Oh, in the State?
Q. Isn't it true that it is ninety to one hundred million dollars?

The respondents object to this as incompetent, irrelevant and immaterial.

A. I have no knowledge as to that.
Q. Have you any impression about it?

The respondents object to this as incompetent, irrelevant and immaterial.

A. No; not close enough to testify from.
Q. In South Omaha, the banks show about six millions on deposit, do they not?

The respondents object to this as incompetent, irrelevant and immaterial, and also for the reason that it is not the best evidence.

A. I think very likely they do show a total of about six millions.
Q. Does this return which you have, Mr. Reed, cover all the deposits in all the banks in Douglas County?
A. It does.

Q. Now, as to the question of merchandise in Douglas County, what is the amount returned or assessed by your office?

A. $1,776,552.00 under Item No. 26, Merchandise.

Q. Now this amount is the assessed value, or the actual value of the merchandise itself in Douglas County?

257 A. That is one-fifth of the actual value.

Q. That would make about eight millions?

A. About nine.

Q. About nine millions?

A. Nearly nine.

Q. Will you state, or can you state what your opinion is as to the amount of merchandise in Douglas County at the time you made your assessment in 1904, the actual value of it, regardless of any mental reservation—in 1904, when you made this assessment?

The ATTORNEY GENERAL: You ask what it was worth then?

Mr. GREENE: I ask his opinion as to what it was worth:

Q. What was the actual value, in your opinion, of all the merchandise in Douglas County at the time you made the assessment in 1904?

A. I would estimate the value at nine and a half million dollars.

Q. That was in the year 1904?

A. That was in 1904.

By the ATTORNEY GENERAL:

Q. That is your present judgment as to what it was worth that year, is it?

A. It is.

Q. How do you get at that information? What is the basis of your opinion?

A. I took the item of "Goods and Merchandise" and multiplied it by five, and then I took the item here that is No. 86, "the value of all other property not specified above, required to be

258 listed," and which is $111,000, and as I know the basis of that item. I add that to the item of "Merchandise" and it makes a total of about nine and a half million dollars.

Q. Then all property which appears there in the item——

A. I don't know—86 is not entirely merchandise, but mostly merchandise.

Q. That you put to merchandise, do you?

A. Well, in my opinion, I put that mostly to merchandise.

Q. Then you don't include under No. 86, this twenty odd millions of money on deposit?

A. No; I think that is mostly merchandise.

Q. Yet, by the very terms of No. 86, this is supposed to cover delinquencies with respect to money, as well as intangible things, isn't it?

A. It is supposed to cover all kinds of things that you haven't got any where else.

Q. Drag-net?

A. Drag-net.

Q. Of course, the basis of your opinion then are these reports made by the other assessors?

A. Well, the reports made by the assessors and my own knowledge of the threshing that we do with the various merchandise interests at that time.

Q. Do you know how many wholesale dry goods houses there are here?

A. Well; I know of all the firms in business in town.

Q. About how many are there?

A. Well I may overlook some of them in going over the list, but there is M. E. Smith & Co., Byrne, Hammer & Co. These are the large houses that do a jobbing business.

259 Q. Well, now of these two, what would you say Smith's stock on hand at the time you made the assessment amounted to?

A. At the time of the assessment last year of M. E. Smith, my personal judgment was that they should have had an assessment of $350,000. Our county board in——

Q. I am asking to have your personal opinion. I don't care about your board. I want your personal opinion.

A. My individual opinion was that they were entitled to an assessment of $350,000.

Q. That would have given them a value of seventeen hundred thousand dollars?

A. Oh, no; that's full value, three hundred and fifty thousand.

Q. Now, what about Byrne-Hammer & Co., what is your individual opinion as to the amount of their stock at that time?

A. I don't recall just what happened to Byrne-Hammer, but I think it was $200,000.

Q. What in your judgment was the value of the stock of the McCord-Brady Company at that time?

A. My judgment of the McCord-Brady stock was $237,500.

Q. Paxton & Gallagher?

A. $275,000.

Q. This was your personal opinion, was it?

A. Well, in those cases there was no change made by the board.

The Attorney General: No change?

A. There was no change by the board, except the M. E. Smith & Co. change.

The Attorney General: What was that?

A. The county board reduced M. E. Smith & Co., from $350,000 to $325,000.

260 Q. Can you give me in a general way the number of firms and individuals who carry merchandise in this county?

A. I can't off-hand.

Q. Can you give it to me later, or give it to the examiner?

A. Well, the statistics on that, running down from the jobber to the man who had twenty-five or fifty dollars' worth, would not be of any particular value, I don't suppose.

Q. Well, we look at it in a different way. If I knew the number of all persons engaged in merchandising in this county——

A. Well, now the merchandise assessments run down to the shoemaker for instance, who might have fifteen dollars' worth of merchandise on hand to repair shoes with. Now the entire number of merchandise assessments in the county would probably run somewhere between 1500 and 2000.

Q. Now, what in your judgment was the actual value of Thompson & Belden's retail dry goods merchants in 1904?

A. I don't remember exactly, but I would think about $60,000.

Q. What was the value of Kilpatrick's stuff at that time, in the same line?

A. I would estimate Kilpatrick's at about $80,000.

Q. What, in your judgment, was the value of Courtney & Co.'s stock, retail grocers?

A. I would estimate the stock of Courtney at $10,000.

Q. What in your observation and experience is the average amount of stock carried by the grocery trade?

The respondents object to this as wholly immaterial, irrelevant and improper cross examination.

A. A grocery store runs down as low as $500.

261 Q. I don't care about how low it would run or how high it would run. What, in your judgment, would be the fair average amount of stock carried by the grocery trade?

A. Well, I think Courtney is about one of the largest grocers here. I don't recall any larger than his. From that a grocery stock will run down as low as $500.

Q. Do you know how many groceries there are in the county? Do the returns show?

A. They would not show by classification under "Groceries." There are so many of them that are general stocks, and it would only be classified under "Merchandise."

Q. Now, take the agricultural implement trade in this city. How many interests of that kind are there?

A. Six or seven.

Q. Six or seven?

A. Six or seven, I believe.

Q. Take, Parlin, Orendorff & Martin, what would you say was the value of their merchandise?

A. About $60,000.

Q. Is that a fair average among that class of business?

A. Well, there are larger concerns than Parlin, Orendorff & Martin.

Q. Well, who is the largest?

A. I think John Deere is the largest.

Q. What is the value of his stock?

The respondents object to this as irrelevant, immaterial and improper cross examination.

A. I estimated John Deere last year at $100,000.00.

Q. What is your opinion as to the value, personally?

262 A. From recent knowledge, I don't think I got him quite high enough.

Q. What would you say it ought to have been?

A. I don't know but $100,000.00 was all right in 1904 and as we haven't 1905 under consideration, I don't suppose you want anything about 1905.

Q. Well, what was 1905?

The respondents object to this as being immaterial.

A. 1905 was the same as 1904, at $100,000.00.

Q. Well, I mean, what was your opinion as to the value of the stock in 1905?

A. My opinion now is that the stock in 1905 assessed for $100,000.00 wasn't high enough.

Q. What would you say it should have been?

A. I cannot make any estimate as to how much more it should have been.

Q. Now, I will ask you if in making these assessments among merchants on merchandise you gave any consideration to their protests and arguments that if you assessed them to their actual value, they might leave the city, or it might in some way affect the growth and prosperity of the city?

A. In arriving at the figures for the final results there was no attention paid to an argument of that kind. It was, I think, only mentioned by one or two, early in the assessment proposition last year, before the returns were completed.

Q. Well, what was the claim?

The respondents object to this as immaterial and irrelevant and not proper cross-examination.

263 A. Well, no particular claim by anyone, except a general argument that business would be ruined and people driven out of town if they had to pay on these enormous values.

Q. Was any attention paid to these claims, as a matter of fact?

A. There was not.

Q. Taking the entire property of Douglas County, of every kind and character, what per cent. of its actual value was it, in your judgment, assessed at in 1904?

Respondents object to this as incompetent, irrelevant and immaterial, and for the reason that the witness has already testified that in his judgment it was assessed at its full value.

A. In my opinion it was assessed at its full value.

Redirect examination.

By Attorney General BROWN:

Q. Mr. Reed, referring to the item of monies on deposit did you in 1904 assess all the monies that were deposited in this county, so far as you were able to discover them?

A. I did.

Q. Was there a single dollar of monies left off the tax list intentionally by you or your deputies?

A. There was not.

Recross-examination.

By Mr. C. J. GREENE:

Q. You knew, as a matter of fact, when you came to look at the returns of your deputies, that they didn't report much more than one-twentieth of the amount shown on deposit in the banks from time to time?

264 A. Well, the amount that the bank shows on deposit, and the books of the man that has the deposit differ very materially.

Q. Well, but you knew of that discrepancy; you were conscious of it, were you not?

A. Well, I thought that some people dodged the question of money in their blank.

Q. And you know pretty near who they are, too, don't you? When a man gives in his return, you pretty near know whether or not—or rather, you have a pretty strong suspicion when he fails to return any money?

A. I will answer that by saying that in a great many cases where we were suspicions of some item, the deputy went back and insisted upon the particular item of money; went back the second time, and insisted that they put down their money.

Q. That would be in a few cases?

A. Well, in a good many cases we had that happen last year.

Q. That would be in regard to a man known to have a great deal of money?

A. No; there were hundreds of these cases last year (the deputy made the second call for the purpose of getting the money on deposit.

Q. In 1904?

A. Yes, sir.

Q. Is that the only means that you availed yourself of?

A. That is the only means, yes, sir.

Q. Have you the horses returned on your list—how many were returned last year?

A. Horses averaged at assessed value $11.27, or a little over $56.00 per horse, full value.

265 Q. What did they average this year?

Respondents object to this as immaterial.

A. I think it is $11.19 this year.

Q. A little less than that of last year?

A. A fraction less than last year. However, the state board jolted that item.

Q. Did the state board increase that item?

A. Yes, sir.

Q. How much?

A. Thirty-three and a third per cent. That is, I saw it in the paper. I have had no official notice at all.

Redirect examination.

By Attorney General BROWN:

Q. From your experience, Mr. Reed, as a real estate man, buying and selling real estate, what would you say as to whether or not the consideration put into a deed indicates the real consideration that passes?

Complainants object to this as being immaterial and incompetent.

A. I would state that in a great many instances the valuation or the stated consideration of a deed does not indicate the real value, and in the matter of assessments, we found so many considerations that did not express the real value, that we finally commenced to practically disregard considerations mentioned in deeds.

Q. What was the fact? Did the stated consideration exceed the real value of the property, as a rule?

A. It exceeds it in more cases than it undervalues, but we have found instances where there were undervaluations in considerations.

266 Q. It is, in your judgment, an entirely unreliable test?

A. It is entirely unreliable in this county.

Recross-examination.

By Mr. C. J. GREENE:

Q. You mean it is unreliable as to a particular transaction, do you not?

A. I do.

Q. But taking it one with another, it gives a fair expression of the value, or the purchase price, does it not, throughout a number of transactions?

A. Well, it might. I don't——

Q. Well, in other words, it depends—the consideration depends largely upon the personal claims and motives of the parties to the deal?

A. Well, there are a great many different things that enter into the transaction: when immediate possession is to be given, or possession in a couple of years hence, or a favorable lease, or a low rate of interest, or no interest at all for several years; so that in my opinion, the stated considerations of a conveyance are of no value in making assessments.

Q. Taking the considerations stated in the transfers that occur in a county for a year, they would give a pretty fair impression of the value of the lands covered by them, would it not, taken as a whole?

A. Well, it might come out practically the same, but it would be of no value in each instance.

Q. And in your assessment, you deal with each individual property?

A. We do.

267 Q. And when you come to get at the value of that property, the consideration may be misleading?

A. It may be.

Q. And it may be correct?
A. It may be correct.
Q. Sometimes they express it too much and sometimes too little?
A. Yes, sir.

Redirect examination.

By Attorney General BROWN:

Q. As a rule, they express it too much, don't they?
A. Well, in a good many cases, they undervalue.
Q. In a majority of the cases, the stated consideration is too high?
A. Well, there are more cases where it is too high than where it is too low.

Recross-examination.

By Mr. C. J. GREENE:

Q. Did the board raise your assessment on mules, too?
A. This year?
Q. Yes.

The respondents object to this as immaterial and not proper cross-examination.

A. Well, I haven't seen anything in the paper about it, and I could not say. They are not through yet.

Witness excused.

At this time, an adjournment was taken until 9:00 o'clock A. M. tomorrow, July 25th, 1905, at which time, further proceedings were had as follows:

268 Mr. J. R. C. MILLER, a witness on behalf of the Respondents is here called and sworn. Being examined in chief by Attorney General Norris Brown, he testified as follows:

Q. You may state your name, age and residence.
A. J. R. C. Miller; 51 years old; my home is at Denton.
Q. In what county?
A. Lancaster County.
Q. How long have you been a resident of Lancaster County?
A. With the exception of two years, just across the line, I have lived in Lancaster County, 29 and about three quarter years.
Q. What has been your business during that time?
A. I have been farming a portion of the time, and a part of the time have been in the mercantile business.
Q. What official position, if any, do you hold at the present time?
A. Assessor of Lancaster County.
Q. When were you elected as Assessor of Lancaster County?
A. 1903.
Q. When did you enter upon the duties of that office?
A. In January, 1904.
Q. Do you still hold that office?
A. Yes sir.

Q. Did you have charge of the assessment of property in that county in the year 1904?

A. Yes sir.

Q. How many deputies did you have that year?

269 A. I had thirty-nine.

Q. How were they appointed?

A. They were nominated by myself and confirmed by the county board.

Q. Did they serve in that capacity that year?

A. Yes sir.

Q. What instructions did you give the deputies with respect to the listing of property for assessment in that county?

A. I instructed them that all property was subject to taxation except that portion that was specially exempt and should be valued at its actual value in the ordinary course of trade, and that the ordinary course of trade was a live and going trade.

Q. Did you and they have any agreement with respect to putting a value on the property less than it was actually worth?

A. No sir.

Q. Did you adopt any rule or resolution to the effect that property should be undervalued for assessment?

A. No sir.

Q. Did you and any of the other county assessors of the state have any understanding or adopt any rule or follow any custom to undervalue any property that you would assess?

A. No sir.

Q. You may state, as a matter of fact, whether you assessed all the property subject to assessment in Lancaster County that year at the full value of that property in your judgment?

To which the Complainant objects as incompetent, the witness not shown to be acquainted with the value of the various properties.

270 A. Yes sir.

Q. Did, or did not, the valuations put upon that property in that year, by you and your deputies represent your best judgment as to its actual value?

A. Yes sir.

Q. Is that true as to the lands in the county?

A. Yes sir.

Q. Is that true as to the live stock in the county?

A. Yes.

Q. Is that true as to the grains of the county?

A. Yes sir.

Q. And of the notes and mortgages?

A. Yes sir.

Q. And of merchandise?

A. Yes sir.

Q. And of other property?

A. Yes sir.

Q. Did you intentionally fail to assess any property in that county?

A. No sir.

Q. What effort did you make, if any, to discover and ascertain all property that was subject to taxation?

A. Well, in the first place we had our deputies to go to each and every place in the county for the discovery of the physical property, the tangible property and examine the records in the register of deeds' office, and in the District Court, and the County Judge, and the office of the County Clerk, for properties that were on record, and notify the parties where we could find them.

271 Q. After you and your deputies had completed your work, listing property for assessment, did you make a report of the result to the county board of Equalization?

A. Yes sir.

Q. Did that board sit as a county board of equalization that year?

A. Yes sir.

Q. Were you a member of the board?

A. Yes sir.

Q. Did you participate in its deliberations?

A. Yes sir.

Q. You may state the fact whether that board heard and considered complaints with respect to valuations of property?

A. They heard and considered complaints.

Q. And did the board make findings with respect to those complaints?

A. Yes sir.

Q. Did those complaints go to the valuations of the property?

A. Yes sir.

Q. Do you remember about how long the county board of equalization was in session?

A. In session the full 20 days.

Q. After it completed its labors, did you report the result by your certificate to the state board of equalization and assessment?

A. Yes, sir we did.

Q. Were you present at any of the meetings of the state board of equalization and assessments that year?

A. I was at several of them.

272 Q. At those meetings did they have under consideration and discussion the valuations as returned by you of property in Lancaster County?

A. Well, in a relative way, yes sir.

Q. Do you know whether or not the state board of equalization and assessments either raised or decreased the valuations as returned by you in that county?

A. They left them as we returned them.

Q. Have you your return with you, Mr. Miller?

A. Yes sir; I had one. I would rather not file this (indicating report in witnesses' hand). This is the original.

The paper referred to is marked Respondents' Exhibit No. 2.

Q. Is the paper marked Respondents' Exhibit 2 the report you refer to?

A. Yes sir.

The ATTORNEY GENERAL: We offer in evidence the report marked Respondents' Exhibit 2.

The complainants object to this as being incompetent, irrelevant and immaterial.

Q. The valuations that appear on this return on the different classes of property in Lancaster County for the year 1904 represent your judgment of the values of that property at that time, do they?
A. Yes sir.

The complainants object to this last question as being incompetent, irrelevant and immaterial.

273 Cross-examination.

By C. J. GREENE:

Q. Of course, you did not personally inspect the property in Lancaster County?
A. No; I did not personally inspect it all.
Q. The valuations of the property were listed by your deputies?
A. Yes sir.
Q. And the valuations made by them in the first instance?
A. Yes sir.
Q. And when these reports came to your office you went over them personally?
A. Yes sir.
Q. Were you at the time familiar with the values of the various items of property appearing in this statement of yours?
A. I think so.
Q. As an individual?
A. Yes, sir.
Q. You know the price of lands?
A. Yes, sir.
Q. And of horses and cattle?
A. Yes, sir.
Q. And household furniture?
A. Yes sir.
Q. And everything included here?
A. Yes sir; I think so. I think I am fairly familiar with all the items there.
Q. You, of course, don't know whether the deputies returned all the property they found?
A. Well; I think they did.
274 Q. But you don't know that?
A. I know they were instructed to do that.
Q. That is all you know about it?
A. I can't positively say that they did put in every calf there was in the yard.
Q. Well, I don't mean that, but do you know as a matter of fact?
A. No; that is something I couldn't know positively.
Q. Neither do you know whether or not any understanding was had between your deputies and any of the tax payers who were returning property?

A. I don't think there was anything of that kind.

Q. I want to know if you know, or not. I don't care for your thought.

A. No; I don't know personally that they didn't make that kind of an arrangement.

Q. Now, what in your judgment is the value of lands in Lancaster County, taking the County as a whole?

A. The County as a whole?

Q. Yes; taking the lands right through generally, what would you say is the value of lands?

A. The value of lands in Lancaster County is a little difficult thing to state, as a whole. Of course, we returned $42 an acre.

Q. I don't care about that, just what do you think is the value of them, as a whole?

A. We have land in Lancaster County some of which is poor as any in the eastern part of the state, and some that is good.

Q. Well, the body of the lands in Lancaster County rank high, do they not?

275 A. Yes, the county as a whole ranks fairly well.

Q. Taking the good with the bad, what would you say?

A. Well, somewhere from $43 to $45 on an average at the present time.

Q. What were the amount of deposits returned? I don't see it. (Looking at Exhibit No. 2) Money on deposit?

A. It was along about Item 14 there; I don't recollect the exact amount.

Q. You put that at $216,540. That is the assessed value?

A. That is the assessed value.

Q. Are you familiar with the bank statements that come out from time to time?

A. Yes sir; I have seen quite a number of them.

Q. Well, you make it your business to——

A. I look them over.

Q. What does it generally show the aggregate deposits to be in the banks of Lancaster County from one time to another in 1904?

A. I can't just call to mind. I know there is a great deal of difference between what we have returned there and what the statements show.

Q. Well, in round numbers several millions?

A. Yes, sir; I think in the neighborhood of five million dollars in all the banks, but I wouldn't be positive as to that.

Q. I am talking about 1904 all the while—the assessment of 1904?

A. Yes sir.

Q. You understand that?

A. Yes sir.

276 Q. Did the county board of equalization raise or lower your figures; your returns?

A. They lowered them.

Q. Well, then, personally, or as far as your personal judgment goes, do you think the action of the board in lowering your returns was justified, on the basis of the actual values?

The respondents object to this as being immaterial and incompetent.

A. Why, I thought our returns were nearest the correct figures.
Q. On what items did they lower?
A. They lowered the real estate.
Q. About what per cent.?

The respondents object to this as being incompetent and irrelevant.

A. In the neighborhood of about ten per cent. I can't tell you exactly, because it varied from precinct to precinct.
Q. Taking the land then, as a whole, they valued them 10 per cent. below what you believed to be a just valuation?
A. About that amount, yes sir.

Redirect examination.

By Mr. BROWN:

Q. Mr. Miller, if your deputies had had an understanding to undervalue property among themselves you would have known about it, wouldn't you?
A. I think so; yes sir.
Q. You supervised all of their work, didn't you personally?
A. Well; this year yes, but last year we didn't have as close supervision as we had this year, on account of the change in the law. Last year we didn't get to see the real estate assessment until it was completed for us.

277 Q. Well, in many instances you went over the individual assessments with your deputies?
A. I went over every precinct in the county with the deputy before the assesment was made.
Q. That was this year or last year?
A. Last year; I was in each precinct of the county.
Q. With your deputy?
A. Yes sir.
Q. At all times they were under your control and supervision?
A. Yes sir.

Witness excused.

278 Mr. C. I. STURGIS, a witness on the part of the complainant is here called and duly sworn. Being examined in chief by Mr. Chas. J. Greene, he testified as follows:

Q. You may state your name and your occupation?
A. Charles I. Sturgis, General Auditor of the Chicago, Burlington & Quincy Railway Company.
Q. How long have you been in the service of that Company, and its predecessor, the Chicago, Burlington & Quincy Railroad Company?
A. Nearly 25 years.
Q. You are familiar with its properties and finances?
A. I am.

Q. I call your attention to the 6th paragraph of the Complainant's Bill, page 13, particularly to the schedule of properties: Are you acquainted with the values of those various properties mentioned in this schedule?

A. I am acquainted with those of them which appear on the general books of the company under my charge, yes.

Q. I will ask you to give your opinion of the value of the first item, Grain Elevators in Chicago, Ills.

A. The amount shown opposite that item, four hundred and eighty-one odd thousand dollars, represents the amount we have paid on account of those elevators, in the original purchase and building additions, etc.

Q. Are they worth at least that amount?

A. In my judgment, they are.

Q. I call your attention to the second item. "Stocks, Bonds and Investments in the Securities of Other Railways, Terminal
279 and Transfer Companies" and ask you to state whether or not the value there stated is correct?

A. The value there is taken from our books, and I believe it to be correct. It is correct.

Q. With respect to the third item "Bonds purchased by said Illinois Company for sinking fund and in the custody of the trustees respectively of certain mortgages, and cash awaiting investment, of the value of $14,249,024.09." State whether or not that item is correct.

A. The exact amount given here I am unable to check. The figure that I have is a trifle in excess of that. It is $14,375,737.30.

Q. As to the fourth item, to-wit: "Sundry available securities, being bonds of one or more of the constituent companies of said Illinois Company, held in its treasury of the value of $509,800."?

A. That is correct as of June 30th, 1903. The figure for June 30th, 1904 exceeded that just about $75,000. It is $584,400.

Q. I call your attention to the next three items, being represented as Cash on hand, and ask you to state what the facts are in reference to those items?

A. The three items together should, according to our accounts, total $4,625,653.01.

Q. "Elevators and appurtenances at East St. Louis"?

A. That represents the cost of that elevator and its appurtenances.

Q. What is the amount?

280 A. The amount exactly should be $200,864.77. I notice that in several cases they have used even figures in this statement.

Q. The next item is "Elevators and appurtenances at Peoria, Illinois, $25,000.00?"

A. That is evidently a misprint and should be $20,000 even.

Q. The next item, "Sheep yards at Montgomery, Illinois, $280,000?

A. That is an item that Mr. Patton will cover. It is not shown separately on the record that I have here.

Q. Now the next item, "Coal lands in Montgomery and McCoupin Counties, Illinois, $289,995.00," what are the facts about those?

A. The correct amount is $4,000 in excess, nearly, of what you have given it. It is $293,344.83.

Q. The next item, "Burlington Park, Neighborville, Illinois, $22,940.00," what about that?

A. The correct figure is $22,942.17.

Q. The next item is "Lands in Madison County, Illinois, $24,960.00?"

A. Mr. Patton will cover that.

Q. What, in respect to the item, "Gravel Pit at Sugar Grove, Illinois, $22,925.00?"

A. Mr. Patton will cover that, too.

Q. "Coal lands in Monroe and Marion Counties, Iowa, $470,000.00?"

A. $469,989.55.

Q. I call your attention to the next item, "Elevators at Council Bluffs, Iowa, $41,000?"

A. $46,666.66.

Q. The next item, "Stock of St. Louis & Kansas City Land Company" together, state the amount of that?

281 A. $1,181,486.50.

Q. "Stocks and securities of Union Depots at Atchison, Kansas; Kansas City; Hannibal and St. Joseph, Mo.; and St. Paul, Minnesota, $266,050.00," what is the fact as to that?

A. $266,049.12.

Q. The last item, "Lands and real estate, personal property and rights, in the City of St. Louis, $400,000.00?"

A. Mr. Patton will reply to that.

Q. Now, turn to page 21. I will ask you to carefully scan the schedule in paragraph 10, page 21 and 22, and give us the amounts as you can, calling particular attention to each one?

A. The first item I have is real estate at Minneapolis, shown on that list as Bridge at Minneapolis. That is a misprint here. Second item on the next page.

Q. Second item on page——

A. Mr. Patton will testify to that. I am merely calling attention to that error. Following that is "Bridge at Winona, Wisconsin." The correct figure is $201,050.00.

Q. Did you give the correct figure as to the Minneapolis property?

A. No. It says, "Bridge at Minneapolis." It should have been Real Estate at Minneapolis. Mr. Patton will give you the figures. The bridge at Winona, $201,050.00, and the last item, "Materials and Supplies on hand, $4,882,964.81."

Q. Mr. Sturgis are there any other items you wish to call attention to?

A. No, sir; none of those that are given in here. I notice in that list the bridge at Quincy listed at $3,200,000.00; that was

282 given in our report of June 30th, 1903, at $3,501,982.97.

Q. I will ask you to state, Mr. Sturgis, from your knowledge as an official, and personally, what the relative value of the Bur-

lington lines, east of the Missouri River, compared to the lines west of the Missouri River is?

The respondents object to this as being immaterial.

Q. Based upon all the facts and circumstances entering into the value?

A. There are two elements that go into an answer to such a question as that. One is the knowledge of the physical property and the other the various results shown by operation on the two sides of the river.

Q. Now, keeping these elements in view, state what in your judgment—I don't ask you to state the values of the two lines—but state how they compare, just the relative value east and west of the river, whether it is worth twice as much, or half as much, or how that may be?

(Question withdrawn.)

Q. What in your opinion,—how much more in your opinion is the line or are the lines east of the Missouri River worth per mile than those west of the Missouri River.

The respondents object as being immaterial, and for the further reason that there is no foundation laid.

A. I should say that a mile west should be taken at not less than one-half of a mile east, and from that up to two-thirds, taking into consideration the elements I speak of, the physical elements, and the result of operation.

283 Q. State whether or not the cost, the average cost of a mile of the Burlington road, east of the river exceeds the average cost of a mile of the road west of the river.

The respondents object to this as being incompetent, irrelevant and immaterial and no foundation laid.

A. I haven't figured that out. I haven't got the separate cost of the two parts of the system. I have no doubt the cost east would be very much in excess of the west, but I have no knowledge of that without figuring up carefully from the records.

Q. How do the lines east and west of the river compare with respect to the mileage per car, the car mileage?

A. Of the total, car mileage of the lines west of the river is 49.47 per cent. of the car mileage of the lines east of the river, and the train mileage of the lines west is 51.36 per cent. of the train mileage of the lines east. In other words, the lines west, as to both car and train mileage, are about one-third of the total.

Q. What is the fact with reference to equipment east and west of the river?

A. Certain classes of equipment are used indiscriminately east and west, not belonging to either particularly. The rest is supposed, as near as possible to be distributed on a basis of the use; that is the train and car mileage; the percentages I have just given. I should say that as far as the locomotives are concerned that there are more of them on the lines east considerably. In fact, that must be true on

account of the larger terminals where the switch engines are
284 used in far larger numbers than there is any occasion for using them on the lines west.

Q. Will you name the larger terminals and centers on the lines east of the river, as near as you can?

A. On the lines east we have Chicago, Aurora, Streator, Peoria, Galesburg, Rock Island, Moline, and East St. Louis, Quincy, in Illinois; Minneapolis and St. Paul, in Minnesota; St. Louis, Kansas City and St. Joseph in Missouri; Burlington, Des Moines Ottumwa and Council Bluffs in Iowa; West of the river, Omaha, Lincoln, Denver, Atchison and Deadwood, meaning the group about Deadwood, not Deadwood itself necessarily, but Deadwood and——

Q. And vicinity?

A. And vicinity, yes. I believe that is all.

Q. Then the points now that you have named are considered large terminals, are they?

A. Points where very considerable business originates.

Q. Can you approximate the number of acres, for instance, in the Chicago terminals, included?

A. No, sir; I cannot. I never have had any work in connection with that. Mr. Patton has direct charge of that.

Q. And you would make the same answer if I should ask you about the other places named, would you?

A. Yes, sir.

Q. Will you state the mileage of the system, east and west, the total mileage, and then the mileage east and the mileage west of the Missouri River?

A. The track mileage owned east of the Missouri River is 4056.27 miles.

285 Q. That in 1903?

A. That was in 1903, and west of the river, 4,136.19 miles.

Q. State what the total amount of the double track owned and operated by the complainant is?

A. In 1903, the mileage of second track, both east and west of the river was 479.54 miles.

Q. Now, how much of that was east of the Missouri River?

A. Practically all of it; they have about 5 miles west of the river. I don't have the exact figures.

Q. Where is the bulk of it, between what points?

A. Almost the entire main line between Chicago and Omaha and Council Bluffs.

Cross-examination.

By Attorney General Norris Brown:

Q. I call your attention Mr. Sturgis to the last item of page 22, "Materials and Supplies on Hand," what does that consist of, just in a general way?

A. That consists of rails, ties, iron, bridge material, and everything that the company uses in its operation and construction of the road.

Q. You figure that it was worth the sum that you stated there do you, in your judgment, it is worth that sum?

A. That is what it cost us, and we take periodical inventories, and if it is shown that the actual stock is not equal to the inventory we make a correction every year, so that we aim to have it represent exactly what it cost us.

Q. All these figures are based on the estimates as you suggest?

A. What I have given are not estimates. Where I have given figures, they are the actual figures based on the cost, just what it appears on our books.

286 Q. Carried on your books as worth so much?

A. Yes sir.

Q. Now, the bridge at Quincy Illinois is worth $350,000 odd, in round numbers—it cost you that did it?

A. It cost the Chicago, Burlington & Quincy Railroad Company that money.

Q. When did they buy it?

A. They bought it about 1902—1901, or 1902.

Q. It has not depreciated any since?

A. The bridge, as a bridge, is not worth that money. That is the property could be replaced, undoubtedly, for something under that, but with its position, as a link in the system, it cost us that, and is worth that to us.

Q. Now, how about the bridge at Winona, Wisconsin, did it cost $201,000.00?

A. That is a bridge that is owned two-thirds by us, and one-third by the Winona & Western, as I remember it, and this represents what our proportion cost us.

Q. When did you buy it?

A. We bought one-third fully ten years ago, and the other one-third about three years ago.

Q. Now, referring to the bill of complaint, let us take those items up, the second item from the bottom of page 14, "Stocks and securities of Union Depots at Atchison, Kansas, Kansas City, Hannibal and St. Joseph, Missouri; and St. Paul, Minnesota" you value at something over $266,000.00, is that what they cost?

A. That represents the cost.

Q. And when did you buy them, or your interest in them, if you remember?

287 A. There is not anyone of them that we haven't had for at least 10 years, except the one at St. Paul, where if I remember right we acquired the property through the purchase of the old Chicago, Burlington & Northern road.

Q. They are used by you as a part of the system of the Company?

A. They are used by us as a part of our terminal service.

Q. And were in 1903, were they not?

A. Yes sir.

Q. Now, your stock of the St. Louis and Kansas City Land Company the next item above, what kind of a company is that?

A. That is a holding Company that holds the lands which the

railroad company originally owned, and the investment was turned into stock instead of remaining in cash.

Q. Are those lands used by you now in connection with your Company?

A. No sir.

Q. The coal lands in Monroe and Marion Counties, Iowa, are worth you say about $469,000.00 in round numbers, that is the cost price is it? When did you buy it?

A. Oh, we have had some of those for a long time, fully ten years.

Q. They would depreciate some in ten years, wouldn't they?

A. Well, we have not opened them all up yet; there may be some depreciation in there and I presume there was, must necessarily be, yes.

Q. Now these items, Elevators and appurtenances at East St. Louis, and Peoria, those figures represent the cost of those elevators?

A. Yes sir.

Q. How long have you owned them?

288 A. We don't own either of them now—yes we do—we don't own the Peoria one now.

Q. In 1903 you did?

A. We did own a certain amount of stock in it. It belongs to a separate outside company at the present time, and the one at East St. Louis we owned in 1903.

Q. And how long had you owned it at that time?

A. At least 10 years, except for a period when it was practically leased to an elevator company.

Q. Now, the three items above, Cash on hand and deposited in other places than Nebraska, you say, was all that money deposited outside of this state in 1903?

A. Yes sir; the total amount of cash at that time was $4,762,399.62, of which $136,746.61 was in Nebraska.

Q. All that money was owned by the Company in connection with its railroad business, was it?

A. Yes sir.

Q. Now, on page 13, the item Sundry available securities, of the value, you say, of $509,800.00, what securities were those, in a general way?

A. Those are the securities of the Chicago, Burlington & Quincy Railroad Company, or of roads that it has obtained possession of.

Q. Or held stock in?

A. Yes, so that it is the securities rather—practically, the securities of the Company, that is for which the Company is responsible.

Q. It is its own securities. Now the "bonds purchased by said Illinois Company for sinking fund and in the custody of the trustees respectively of certain mortgages and cash awaiting investment, of the value of"—about how much?

289 A. Fourteen million and odd dollars.

Q. Now, did you figure the bonds at par?

A. It represents the amount of money in the sinking funds, available for the redemption of our bonds. Some of it has been invested by the trustees at such figures as they have actually paid for the bonds. They may not all be our own bonds, they may be outside bonds, and the rest represents cash which they have not invested.

Q. It represents the sinking fund of the Company?

A. It represents the sinking fund of the Company, turned over to various trustees.

Q. Now, the item of "Stocks, bonds and investments in the securities of other railroads, terminal and transfer companies, of the value of $7,163,982.81, did you figure the value of those at par?

A. Just what they cost us, exactly. The only bonds, figured at par, are those which are shown under item $509,800.00, where it is an investment in our own actual securities, or those which we are responsible for.

Q. The first item "Grain Elevators in Chicago, Illinois," the value of those, given by you, represents the cost of them, does it?

A. Represents the cost.

Q. When did you buy them?

A. I can't give you the date.

Q. Well, approximately?

A. We have had them at least ten years, and we have always had to do so much repairing on those that they are kept very much up to standard.

290 Redirect examination.

By Mr. GREENE:

Q. Are those properties which you have referred to in your testimony included in the railroad assessments in any of the states?

A. That I am unable to answer of my own personal knowledge, as I don't make up the figures for the assessment.

Q. Who does that?

A. Mr. Patton makes that up.

Witness excused.

291 ALFRED PATTON, a witness on the part of the complainant, is here called and sworn. Being examined in chief by Mr. C. J. Greene, he testified as follows:

Q. State your name?

A. Alfred Patton.

Q. State what your business is, Mr. Patton.

A. I am real estate and tax agent.

Q. For what Company?

A. C. B. & Q. Railway Company.

Q. The complainant here?

A. Yes sir.

Q. How many years have you been in the service?

A. Since 1887.

Q. What lines does your jurisdiction include?

A. East of the Missouri River.

Q. Name the states.

A. Illinois, Iowa, Missouri, Wisconsin, Minnesota.

Q. How many miles of line are there, do you remember?

A. In the neighborhood of about four thousand, and a little over.

Q. What are your functions in this matter?

A. I am custodian of all title papers, and have charge of the real estate generally, together with the scheduling of all properties for taxation purposes.

Q. I wish you would look over the items mentioned in paragraph No. 6, of the complainant's bill, page- 13 and 14, and state whether or not those items are included in the railway assessments of the road?

A. No sir; none of them.

Q. Of course, I imply in the states in which the assessments are made?

292 A. No sir.

Q. In their various localities, they are taxed locally, are they?

A. Yes sir.

Q. And not as a part of the railway, upon a mileage basis?

A. No sir.

Q. As a matter of fact, Mr. Patton, do they have the united system of taxing railways in all these states? Are the railways in these several states east of the river taxed by the unit system, so called?

A. You mean as a whole?

Q. Well, in the state—does each state have the system that is called the unit system of taxing your roads?

A. Yes sir.

Q. Are you required to return any of this property for that purpose?

A. No sir.

Q. Are you acquainted personally with this property? Is any of it under your supervision?

A. Any of that that would come under the head of real estate, I would be.

Q. The grain elevator at Chicago?

A. Yes sir.

Q. Under your jurisdiction?

A. Yes sir.

Q. What would you say was the value of the grain elevators?

A. There are four elevators, and I return them with the rest of the real estate in Chicago that is locally assessed.

Q. Well, I will ask you whether or not $481,816.56 is a fair valuation of them?

293 A. That would be a very fair valuation of them, yes sir.

Q. I will ask you to state, in a general way, whether or not these items, so far as relates to the railroad's real estate and other tangible property, are correct, as they appear in this paragraph 6.

A. They are much less than the value of the property at the present time, or than it was in 1903; that is to say, these book

values that Mr. Sturgis has given are much less in the estimation than the real fair cash value was in 1903.

Q. In other words, they were worth more than the company paid for them?

A. Yes sir.

Q. I call your attention to the item, "Sheep yard at Montgomery Illinois, $280,000.00" and I will ask you to state if you know that property?

A. Yes sir; I do.

Q. And what is its value?

A. The present value?

Q. I mean when I use that word—I mean in 1904—1903 or 1904.

A. Well, that includes in the neighborhood of between five and six hundred acres of land, together with an enormously big elevator and sheep yards, and the value of $280,000.00 is a very fair and conservative value.

Q. I call your attention to "Lands in Madison County, Illinois, $24,960.00." What do you say about the value of these lands in 1903 and 1904?

A. I think that must be a misprint. There is in the neighborhood of 289 acres there which cost the company $54,900.00.

Q. What would you say its fair value would be? Is that a fair value?

294 A. Yes sir; that is a very fair value.

Q. I call your attention to "Gravel Pit at Sugar Grove, Illinois, $22,925.00," and I ask you to state what the value of that property was in 1903 and 1904.

A. That was a very fair value of that land.

Q. Elevators at Council Bluffs, Iowa. What is the value—what is their value, or what was their value in 1903 and 1904?

A. Well, the correct purchase price of that property was $46,000.00, even figures, and it is fully worth that. It was fully worth that.

Q. What did the "Lands, real estate, personal property and rights in the city of St. Louis" consist of, mentioned in the last item?

A. That is land outside of the railroad property. It is locally assessable property, other than is used for railroad purposes.

Q. What is the value of that?

A. Why, I should think the fair value is stated here, $400,000.00. I should think that is very fair.

Q. I call your attention to the schedule mentioned in paragraph 10, page- 21 and 22 of complainant's bill of complaint. What does the first item refer to, "Real Estate in Chicago and local points in Illinois?"

A. I don't know; the real estate in Chicago, and locally assessable in Illinois, outside of the elevator property, at a very conservative value would be worth about $4,700,000.00.

Q. Four million seven hundred thousand?

A. Yes sir.

Q. Is that item you have just given included in any of the other items that have been testified to?

295 A. No sir.

Q. I see a reference here made to real estate in Dubuque and local points in Iowa, $250,000.00. What is the fact about that?

A. Well, that is locally assessable property in Iowa.

Q. And what does it amount to?

A. $250,000.00.

Q. Is that right, and the correct value?

A. Yes sir; that is correct.

Q. I will call your attention then to the several items in this schedule, and ask you to state whether or not the values there given are correct, or if any of them ought to be changed, I will ask you to state wherein.

A. As far as any of the items that come within my department——

Q. What are they?

A. They are correct.

Q. They are correct?

A. Yes sir.

Q. I understand you to say that all of these items mentioned in paragraphs 6 and 10, which have been referred to in the testimony of Mr. Sturgis and yourself—are all of them not included in a regular railroad assessment under the unit rule?

A. Yes sir; that's correct.

Q. They are subject only to local assessments?

A. Yes sir.

Q. In the various states where they are located?

A. Yes sir.

Q. Mr. Patton, can you give us approximately the number of acres which are included in the terminals at Chicago?

296 A. We have terminals inside the city as well as outside the city of Chicago. The acreage inside the city would probably be in the neighborhood of 250 acres, while that out at Hawthorn and in that vicinity, outside of the city limits would be in the neighborhood of 200 acres.

Q. Well, is Hawthorn in Cook County?

A. Yes sir.

Q. Well, then, under the general description, you have 500 or 400 acres or more in Cook County?

A. Yes sir.

Q. Now, to what part of the city do these terminals extend? I want to see how near to the heart of the city.

A. Well, they come down within a half or three quarters of a mile—a half a mile—of the city hall.

Q. How far from the Union Depot between Madison and Adams streets?

A. Between Madison and Adams on Canal street is the Union Depot, and they come within a few hundred feet of that station.

Q. Now, about how many acres of terminals are there in the city of St. Louis, and give an idea of about how they are located with reference to the city?

A. Well, I can't state the number of acres in St. Louis. The law don't require us to return it on an acreage basis.

Q. But can't you give it approximately?

A. And they are very scattered.

Q. I will ask you what is, in your judgment, the value of the Chicago terminals.

The respondents object to this as being wholly immaterial, irrelevant and no foundation laid.

297 A. Including the Hawthorn yards?

Q. Yes.

A. Twenty to twenty-five million dollars.

Q. Could you give an estimate of the value of the terminals in St. Louis?

The respondents object to this as being wholly immaterial, irrelevant and no foundation laid.

Q. That outside of the locally assessed property? That which is terminal property?

A. Approximately five million dollars.

Q. You have extensive terminals at Kansas City?

A. Quite extensive.

Q. What would you say they were worth there?

A. I can't say; probably in the neighborhood of three million dollars.

Cross-examination.

By Attorney General BROWN:

Q. I call your attention to the items of property which you say were locally assessed, upon which you put certain values. Did you return these properties for local assessment in the several localities where they are?

A. Yes sir.

Q. Were they assessed at the sums you have valued them at here to-day?

A. No sir.

Q. Much less than that, were they not?

A. No; I would not say much less.

Q. Were they assessed any more?

298 A. In some instances, yes.

Q. In the aggregate, they were assessed for less or more?

A. They were assessed at fully as much as these figures would show, as a whole.

Q. Which ones were assessed for more than you have figured them here as being worth?

A. You say assessed?

Q. Yes?

A. These values here are the full values. Assessed values in different states may be one-fourth or one-fifth.

Q. Well, in order to fix one-fourth or one-fifth, they would have to find the full value, wouldn't they?

A. Yes, sir.

Q. At what point was the full value more than the figures you have put on here?

A. I can't pick out any particular item now.

Q. Was there any point, as a matter of fact?

A. I think there was, yes, sir.

Q. What did you return your property locally assessed at in St. Louis, do you remember?

A. I don't remember.

Q. Do you remember what you returned it in any of these instances?

A. No, sir.

Q. Could you prepare and send to the Examiner a statement showing what you returned these properties as worth in these several localities for the year 1903? I don't mean today.

A. For the year 1903?

Q. 1904—I mean 1904.

299 A. I could possibly for Illinois.

Q. Couldn't you for any of these other states within your jurisdiction?

A. I doubt it now.

Q. Well, you made the returns, didn't you, Mr. Patton?

A. Yes, sir; there were returns made.

Q. Why can't you furnish me with these statements?

A. The lines in 1900—those for the year 1904 you want?

Q. Yes, sir.

A. As of what date would you want the returns?

Q. Why, the time they were made—the returns for the assessment of that year?

A. Well, I don't know; I could not say.

Q. Your books and records show what returns you made in 1904, do they not?

A. Well, as I say, I can't say whether I could or not.

Q. Well, will you furnish such a statement to the Examiner. Now, if you can't do it, you can say you can't.

A. Well, I can't.

Q. What is the value of the terminals at Omaha of this company?

A. Well, I don't know.

Q. You know the value of all the terminals east of the river, but none of them west?

A. I have no charge west of the river.

The defendants and each of them here request the witness to produce a statement of the values returned by him on behalf of the Company, of all the property which he has testified was locally assessed in 1904, and to which he has given values.

300 Redirect examination.

Q. What per cent. of the actual value do they return property in Illinois?

The respondents object to this as immaterial.

A. The State Board of Equalization of Illinois the last two years, in equalizing property, claimed our property is returned for assessable purposes at about seventy per cent. of their actual value.

Q. And then the assessment is one-fifth?
A. One-fifth of the valuation.

Recross-examination.

By Mr. BROWN:

Q. The law requires it to be listed at its full value, doesn't it?
A. Yes, sir.

Witness excused.

301 Mr. R. D. POLLARD, a witness for the plaintiff was here called and duly sworn. Being examined in chief by C. J. Greene, Esq., he testified as follows:

Q. State your name.
A. R. D. Pollard.
Q. And what is your business?
A. Tax Agent of the lines west of the Missouri River of the C. B. & Q. Railway Company.
Q. How long have you been in the service of that Company?
A. Over twenty-one years.
Q. West of the River?
A. Yes, sir.
Q. You live here in Omaha?
A. Yes, sir.
Q. Do you know the properties of the Company west of the river?
A. Yes, sir.
Q. Can you state what property and the value thereof was not included in the regular railway assessment under the unit plan?
A. Yes, sir.
Q. West of the River?
A. Yes, sir.
Q. And will you state first what states west of the River have the unit system of taxation?
A. They all have. I have charge of the six states west of the river, and a little in Iowa and Missouri.
Q. Do you make returns to the state boards for the purposes of assessment?
A. Yes, sir.
302 Q. Now, give a list of the properties not returned.
A. I have got them down in black and white.
Q. In all states?
A. By states, yes, sir; and here is the list.

Plaintiff here offers in evidence the statement of property referred to by witness, which is marked "Plaintiff's Exhibit No. 6," copy of which is hereto attached.

Q. Now, I will ask you to state what is the full value of the property in 1904 in the State of Nebraska?
A. The full value is $699,156.25.
Q. And the assessed valuation?
A. Was $139,831.25.
Q. What was the full value of the property in Colorado that year?
A. $263,505.00.

Q. What was the full value of the property in Iowa? Do you have anything to do with that?
A. Two bridges across the Missouri.
Q. What was that?
A. $357,100.
Q. The Iowa items are merely bridges across the river?
A. Yes, sir; under the laws of Iowa they are assessed locally.
Q. Montana?
A. $90,963.00.

(For Exhibit 6 above referred to, see next page.)

303 EXHIBIT 6, C. W. P.

Property Owned by the C., B. & Q. R. R. Co. Which Was Not Included in the Assessment of Any Railroad for the Year 1904.

County.	1904 assessed valuation.	1904 full value.
Adams	$1,030.00	$51,150.00
Box Butte	239.00	1,195.00
Buffalo	552.00	2,760.00
Cass	2,215.00	11,075.00
Cheyenne	88.00	440.00
Clay	105.00	525.00
Colfax	400.00	2,000.00
Douglas	32,515.00	162,575.00
Dundy	64.00	320.00
Franklin	127.00	635.00
Gage	366.00	1,830.00
Hall	14.00	70.00
Hamilton	105.00	525.00
Harlan	529.00	2,645.00
Hitchcock	140.00	700.00
Jefferson	8.25	41.25
Pawnee	670.00	3,350.00
Phelps	2,660.00	13,300.00
Polk	200.00	1,000.00
Richardson	53.00	265.00
Saunders	110.00	550.00
Seward	130 00	650.00
York	136.00	680.00
Lancaster	18,840.00	94,200.00
Johnson	20.00	100.00
304 Howard	30.00	150.00
Red Willow	4,183.00	20,915.00
Havelock, Shop, Tools & Machinery & Shop Buildings	36,100.00	180,500.00
Burnham Sheep Yards, Machinery, Buildings	5,315.00	26,575.00
Lincoln, 1st Ward	192.00	960.00
Office Furniture & Fixtures, Omaha	2,400.00	12,000.00
Plattsmouth, Shop, Tools & Machinery	10,000.00	50,000.00
Shop Buildings	15,295.00	76,475.00
	139,831.25	699,156.25

305 Colorado.

Lots and lands in City and County of Denver assessed for 1904, at $103,188.00.

Property assessed at 40% of actual value :	
Full value	$257,970.00
Sterling, Colorado :	
Lots assessed at $305.00 for 1904, worth fully	610.00
Lyons & Longmont, Colorado :	
Lots etc., assessed at $1,925.00 for 1904, worth fully	3,850.00
Adams County, Colorado :	
43 acres, etc. at $25.00 per acre	1,075.00
	$263,505.00

Iowa.

East ½ Nebraska City Bridge	$153,300.00
" " Plattsmouth "	203,800.00
	$357,100.00

Montana.

Yellowstone, Carbon & Rosebud Counties returned in 1904 for assessment at $45,481.57 actual value fully	$90,963.00

306 South Dakota.

Lawrence Co	$17,547.00	
Custer "	432.00	
Pennington "	150.00	
Fall River "	72.00	
1904 Assessed valuation	$18,201.00	
Actual value fully double, or		$36,402.00

Wyoming.

Crook Co	$1,200.00	
Laramie Co	18,950.00	
Sheridan Co	18,314.00	
Bighorn Co.: Eating House, Cody	500.00	
1904 Assessed valuation	$38,964.00	
Actual value fully double		$77,928.00

Kansas.

Atchison	$100.00	
Cloud Co	100.00	
Concordia City	88.00	
Doniphan Co.: Lots at Troy Junction and White Cloud	167.00	
1904 assessed valuation	$455.00	
Worth fully 3 times assessed valuation		$1,365.00

307 Grades owned by the C. B. & Q. R. R. Co. west of the Missouri river, that have not been ironed, the cost of which were as follows:

Sappa Creek Line	$48,122.02
Crete, Milford & Western	50,131.12
Beaver Valley Line, State Line West	1,395.50
G. I. & N. W. Buffalo Line	2,839.06
R. V. & W. Imperial West	56,890.66
Colo. & Wyo. Holyoke East	17,894.42
Lincoln & Black Hills, North of Ericson, Northwest of Burwell, West of Arcadia.. $233,150.78 Total 81.6 Miles. Deduct 19.4 miles Arcadia to Sargent that has since been ironed. 76 22-100 % of $233,150.78	177,707.52
Total	$354,980.30

See Journal Entry No. 5567.
September 1897.

End of Plaintiff's Exhibit No. 6.

308 Q. In South Dakota?
A. $36,402.00.
Q. In Wyoming?
A. $77,928.00.
Q. In Kansas?
A. $1365.00.

Q. I will call your attention to your statement filed with your evidence to the grades specified therein, and what is the full value of them?

A. I took these figures from our general books, and they show $354,980.30. I have an explanation to make in regard to that—part of that—from Arcadia up to Sargent has since been ironed, and I have taken that percentage off.

Q. What then, Mr. Pollard, is the full value of all the properties of the Company within your jurisdiction not returned by you to state boards for railway taxation, and subject to local assessment?

A. I will say $1,881,399.52. Of course, I don't testify that these grades are assessed locally, because I don't know, but everything there has been assessed, except maybe these grades, and I don't know whether they are assessed locally or not. I have taken here in Nebraska the assessed valuation. I have got every item here, and have multiplied that by five for the full value, and in the other states they vary the percentage of true value to the assessed value, and I have given, I think a very fair value on them.

309 Q. Now, are the values and assessed valuations opposite each item, as appears in the Exhibit you offer as part of your testimony, correct?

A. Yes, sir; to the best of my judgment. There is no doubt about Nebraska.

Q. Now, you may give a list of the important terminals in Nebraska?

A. Lincoln and Omaha in Nebraska, Denver in Colorado and Atchison, in Kansas.

Cross-examination.

(By Attorney General BROWN:)

Q. Mr. Pollard, you have been Tax Agent for the complainant for over 20 years, haven't you?

A. No sir; about 15 years.

Q. About 15 years?

A. Yes sir.

Q. Do you know the value of the System of the C. B. & Q. Railway Company?

A. Why; I can't say that I do know it.

Q. Do you know the value of these terminals in Omaha of that Company?

A. Why, I did figure that out for the State Board last year, but I have forgotten just what it was.

Q. Approximately, what would you say these terminals are worth in Omaha of the C. B. & Q.?

A. I would rather you would ask me that some other day. I have been over it carefully with our right-of-way agent.

Q. Can't you answer it today, approximately?

A. I would rather not.

310 Q. I will ask you to state approximately what, in your judgment these terminals of the C. B. & Q. Railway Company in 1904, located at Omaha were worth?

Plaintiff objects to the question as incompetent and immaterial.

A. I had rather not answer that today.

Q. If you can't answer it you can say so.

A. I can't answer it today intelligently.

Q. Can you state what the value of the terminals of that Company at Lincoln were worth in 1904, approximately?

A. I would make the same answer as in regard to Omaha, that I would rather not today, because I have not got the figures.

Q. Will you answer tomorrow?

A. I think so, yes sir; that is to the best of my judgment.

Q. I don't care about exact figures.

A. I would rather be exact.

Q. Do you know what the C. B. & Q. Railway Company's property, outside of that locally assessed, is worth in the state of Illinois?

A. No sir; I don't.

Q. In Iowa?

A. No sir.

Q. In Kansas?

(Question withdrawn.)

(Witness excused for the present.)

311 WEDNESDAY, *July 26th*, 1905—10:00 a. m.

Mr. BURLINGAME WALKER, a witness on the part of the Respondents is here called and sworn. Being examined in chief by Attorney General Norris Brown, he testified as follows:

Q. State your name, age and residence.

A. My name is Burlingame Walker; residence North Bend, Dodge County, Nebraska. Did you say age?

Q. Yes.

A. Age 46.

Q. How long have you lived in Dodge County, Nebraska?

A. Since 1880.

Q. What official position, if any, do you hold at the present time?

A. County Assessor of Dodge County.

Q. Nebraska?

A. Nebraska.

Q. When were you elected county assessor of Dodge County?

A. In the fall of 1903.

Q. When did you enter upon the duties of that office?

A. I think some time in January—I don't remember the exact date—of 1904.

Q. Did you perform the duties of that office that year in Dodge County?

A. I did.

Q. How many deputies did you have to assist you?

A. Seventeen.

Q. How were they appointed?

A. By myself, with the consent of the County Board.

312 Q. What instructions, if any, did you give your deputies when they went out to make assessments of property that year?

A. In what way do you mean?

Q. As to what they should do.

A. Well, the only instructions given them was that they must assess property in the county at the full cash value.

Q. What instructions did you give if any, with reference to the assessing of property in the county?

A. The same instructions.

Q. Was there any understanding or agreement or custom or rule between you and them that was followed, to undervalue property that year.

A. No understanding of that kind of any nature.

Q. You intended to assess property at its full value?

A. Yes sir.

Q. Well, now state if you did assess property in that county that year for what you deemed it to be actually worth?

A. To the best of my knowledge, I did.

Q. Did you report the result of your assessment to the county board of equalization?

A. Oh, yes.

Q. And did you sit as a member of the county board of equalization of that county that year?
A. I did.
Q. At that meeting of the board, were complaints heard and discussed and determined, with reference to valuations?
A. They were.
Q. After the adjournment of the county board of equalization, did you report to the state board of equalization the result?
313 A. I did, yes sir.
Q. Have you that certificate or report with you?
A. I have a copy of it.
Q. Will you produce it?
A. Yes sir; here it is.

(The report referred to by witness is marked Respondents' Exhibit No. 4.)

Q. (Handing witness Exhibit 4.) Is the paper I now hand you, marked Respondents' Exhibit 4, the certificate and report you refer to?
A. A copy of it; yes sir.
Q. Is it a correct copy?
A. A correct copy.

The ATTORNEY GENERAL: The respondents now offer in evidence Exhibit 4 above referred to.

Q. Now, do the values as returned by you to the state board of equalization and assessment in this Exhibit represent what you understood to be the actual cash value of the property assessed by you that year?
A. Yes sir.
Q. Did the state board of equalization and assessment change these values in any respect?
A. Not that I know of, no sir.
Q. Did any property in Dodge County that year escape taxation that you know of?
A. Not to my knowledge, no sir.
Q. You and your deputies intended to assess it all?
A. Yes sir.

314 Cross-examination.

By Mr. GREENE:

Q. These assessments were all made by your deputies, were they not?
A. You mean assessments?
Q. Yes.
A. Yes sir; the original assessments—that is the copy, if I understand you right—(pointing to Exhibit)—the assessments were made by the deputy assessors.
Q. And they reported their findings to you?
A. Yes sir.

Q. And you reported them to the board?
A. County board, yes sir.
Q. Well, you didn't personally inspect all the property, or make any original assessments yourself?
A. Not alone. Of course, I had them correct property that I thought was wrongfully assessed, but I made no assessments myself, if I understand you right.
Q. Well, do you think the average value of land in Dodge county, improved land—is so small as $53.86?
A. Well, that is my honest opinion.
Q. The average value of improved lands in Dodge County?
A. Yes sir.
Q. What was the amount of cash and deposits you returned?
A. It is under No. 14, I believe.
Q. (Reading from report.) You returned $131,338.20.
A. I don't remember exactly now.

(Mr. Greene hands witness report marked Exhibit 4.)

A. (Continuing:) Yes; the assessed value—No. 14, Money on Deposit, $131,338.20.
315 Q. That is the assessed value is it?
A. Why, yes sir; that is the assessed value; that is one-fifth of the original value.
Q. So five times that amount would be the entire value, or the actual value of the deposits?
A. Yes sir.
Q. Well, now, what do the bank statements from time to time show during this year that there was on deposit in the banks of that county?
A. What do they say?
Q. Yes sir.
A. Well; I can't say as to that.
Q. You see them occasionally?
A. Yes sir.
Q. Don't they foot up several millions?
A. Yes; well, I wouldn't say how many millions, but they foot up quite a sum.
Q. Well, five or six millions?
A. Well, I can't say, off-hand.
Q. You would not be surprised if they did?
A. No, I would not.
Q. Or even ten millions?
A. Well, I would not say what would surprise me.
Q. Did you get all the notes and mortgages outstanding?
A. You mean notes and mortgages?
Q. Yes.
A. We aimed to, yes sir; yes sir, we examined the records.
Q. Didn't omit any?
A. Not intentionally, no sir.
Q. You give merchandise $188,131.00 in your return?

316 A. Yes sir.

Q. Does that cover all the merchandise in the county of every kind and description?

A. Well, no—well, I don't know if you mean—that covers all that is under that one item. There is other property that is not covered in that one item.

Q. But this includes all goods, merchandise and manufactured articles on hand?

A. That includes all that was listed under that item, if I understand it correctly.

Q. That would be over $900,000.00 of actual value. In making your assessments on the goods covered under this item, did you make any inquiries at the commercial agencies?

A. No.

Q. How did you get at them?

A. Well, we went around, or the deputies did and assessed a party, and if they thought it was the value of the property, they listed it. If they didn't think so, they didn't list it as the value of the property. That is they had them list it at a fair cash value, you understand.

Q. Now, will you name one of the largest dry goods houses there?

A. In Fremont?

Q. Yes, in Fremont?

A. Well, Eddy Brothers is a large establishment.

Q. Now, what did you assess them at, or what did you find the actual value of their stock to be?

A. Well, I could not say, off-hand. I think it was something like $50,000.00.

Q. You can look that up when you get home and change
317 it if you want to, if you think you have made a mistake.

A. Very well.

Q. Now, what is the largest grocery house there?

A. Well, I can't tell; they are not very extensive grocery houses there at Fremont. In the wholesale line there is May Bros., but I don't remember what they were assessed at.

Q. Will you look that up and let us know?

A. I can, yes sir.

Q. Will you furnish the examiner a list of say two or three merchants in each line of business, and manufacturers, and their assessments for 1904. I want to get a sample of your assessments, and then I want to see what sort of a guess you people made.

A. Yes sir; I will.

The ATTORNEY GENERAL: We object to the introduction of these for the reason that they are incompetent, irrelevant and immaterial.

Witness excused.

See next page for the list furnished by the above witness, as per request of counsel.

318 *Statement Furnished the Examiner by Burlingame Walker, County Assessor of Dodge County, Nebraska, and Which is Referred to in His Testimony.*

NO. BEND, NEB., *July* 28, 1905.

All Goods, Merchandise & etc., Listed under Item No. 26.

Fremont Saddlery Co.	No. 26, Actual Value.....		$30,000
" Foundry & Mchn. Co.	"	"	17,200
" Carriage Mfg. Co.	"	"	15,350
" Creamery Co.	"	"	4,000
" Furniture & Carpet Co.	"	"	3,800
Eddy Bros.	"	"	50,000
Marshall Bros.	"	"	5,800
May Bros.	"	"	40,000
Cronin Bros.	"	"	6,425
Jordan & Shrinton,	"	"	15,000
Nye-Schneider-Fowler Co.	"	"	20,000
Sager & Sons,	"	"	4,750
C. H. Stoner,	"	"	4,000
Geo. W. Shephard,	"	"	2,800
Standard Oil Co.	"	"	1,000
W. C. J. Shull	"	"	6,000
Bader & Rodgers,	"	"	11,000
H. G. Breitenfeld	"	"	3,000
Emil Closs	"	"	1,200
Geo. W. Ely	"	"	3,900
Foot, Stone & Rodgers Co.	"	"	6,000
Fremont Brewing Co.	"	"	30,000
Gumpert Bros.	"	"	33,500
319 M. Havens,	Item No. 26, Actual Value.....		12,000
J. H. Knowles,	"	"	12,000
Simon Kasue,	"	"	2,000
Nelson Hardware Co.	"	"	3,900
Thad. H. Quin.	"	"	12,500
Parlor Furniture & Mattress Co.	"	"	5,000
N. Sampter,	"	"	9,000
Western Seed & Irrigation Co.	"	"	5,000

(Signed) BURLINGAME WALKER,
Co. Assessor.

320 Mr. JAMES M. TEEGARDEN, a witness on the part of the respondents is here called and sworn, and being examined in chief by Attorney General Brown, he testified as follows:

Q. State your name, age and residence.
A. James M. Teegarden, age 43.
Q. Your residence?
A. Weeping Water, Nebraska.
Q. What county is Weeping Water in?

A. Cass County.
Q. How long have you lived in Cass County?
A. Since 1882.
Q. What official position, if any, do you hold at the present time?
A. I am County Assessor of Cass County.
Q. When were you elected to that office?
A. Two years ago this coming fall.
Q. In 1903?
A. In 1903.
Q. When did you enter upon the duties of that office?
A. January 1st—not January 1st, on the first Monday in January.
Q. 1904?
A. Yes sir.
Q. How many deputies did you have?
A. Twenty.
Q. How were they chosen?
A. How were they chosen?
Q. Yes.
A. I recommended them and the county commissioners approved the recommendation.
321 Q. Did they quality and enter upon the performance of their duties?
A. Yes sir.
Q. What instructions, if any, did you give the county assessors when they started out to do their work?
A. I instructed them to assess all property at its actual cash value, that it would bring in the ordinary channels of trade.
Q. What has been your business since you lived in that county?
A. Well, I was in the drug business for a number of years, and since then I have been in the real estate, loan and insurance business.
Q. Are you well acquainted with the values of real estate and personal property in that county?
A. Yes sir.
Q. How many years have you devoted to the real estate business?
A. Four years.
Q. Was there any understanding or agreement or custom or rule followed by you and your assessors to undervalue any property in that county that year?
A. No sir.
Q. Was it your intention to assess all property of that county at its actual value?
A. Yes sir.
Q. And did you so assess it?
A. I did.
Q. Is that true with respect to the real property?
A. Yes sir.
Q. Is it true of livestock?
A. Yes sir.

322 Q. Grains?
A. Yes, sir.
Q. Notes and mortgages?
A. Yes, sir.
Q. Monies and credits?
A. Yes, sir.
Q. Merchandise?
A. Yes, sir.
Q. And all other property?
A. Yes, sir.
Q. Did the county board of equalization have a meeting that year?
A. Yes, sir.
Q. Did you sit as a member of that board?
A. Yes, sir; I did.
Q. How long, approximately, was the county board of equalization in session?
A. Well, I don't know as I can tell you exactly.
Q. Well, I don't want it exactly, but about?
A. About two weeks.
Q. During that time, were there complaints before the board as to the values?
A. Yes, sir.
Q. Did or did not the board of equalization reach a result and determine these values?
A. They did determine the values, yes, sir.
Q. Now, after the county board of equalization adjourned, did you make a report to the state board of equalization and assessment of the result of your labors?
A. Yes, sir.
323 Q. Have you that report with you?
A. I have a copy of it.
Q. Will you produce it?
A. Yes, sir; here it is (handing the Attorrney General a paper which is marked Respondents' Exhibit No. 5).
Q. (Handing witness Exhibit 5.) Is Exhibit 5 a true and correct copy of the values returned by you to the state board?
A. Yes, sir.
Q. Do the values therein recited reflect the judgment of yourself and deputies as to what these properties were actually worth in 1904?
A. Yes, sir.

The ATTORNEY GENERAL: We now offer in evidence Exhibit No. 5 referred to.

Q. Was there any property that escaped taxation in your county that you know of, or did know of at the time you made the assessment?
A. No, sir—well now, I would like to qualify that—nothing except what was exempt by statute.
Q. Well, all the property which was assessable, you intended to assess?
A. Yes, sir.
Q. Did you intentionally allow any property to escape taxation that was liable to taxation?

A. No, sir.
Q. Your deputies were under your supervision, were they?
A. Yes, sir.
Q. You examined and approved their work?
A. Yes, sir.
324 Q. Do you know whether the state board of equalization and assessment changed your values?
A. They did not.
Q. Were you present at the meeting of the state board of equalization and assessment that year?
A. Yes, sir.
Q. Did they have these values before them for consideration?
A. Yes, sir.

Cross-examination.

By Mr. GREENE:

Q. You say you listed all the property you knew of at that time? Was there any omitted that you found out since?
A. Not that I know of.
Q. Valuations in the first instance were made by your deputies?
A. Yes, sir.
Q. In the field?
A. Yes, sir.
Q. And returned to you?
A. Yes, sir.

Witness excused.

325 OMAHA, THURSDAY, *July 27th*, 1905—9:30 a. m.

Mr. R. D. POLLARD, witness for the complainants, resumes the stand, and his cross examination by Attorney General Brown is continued, as follows:

Q. What is the value of the terminals in the city of Omaha, or what was it in 1904?

Complainants object to this as being immaterial and irrelevant.

A. At the request of the state board——

Mr. GREENE: No, no, now Mr. Pollard, just state what is is.

A. Why $750,850.00 in the city of Omaha.
Q. That includes this depot down here?
A. That is the land.
Q. My question is, what is the value, or what was the value of the terminals of the C. B. & Q. Ry. Co., in Omaha, as they existed in 1904.
A. Well, as I have already stated, the land is $750,850.00; the buildings are shown in our returns, and as to the value of the main track and side tracks, I can't testify just at this present time.
Q. Do you know the value of the buildings?
A. Not without going through the record there. I can do that.
Q. I will ask the witness to make such an investigation as he pleases, and state after that investigation what the value of the C. B. & Q. Ry. terminals are or were, in Omaha, as they existed in 1904.
A. Yes, sir.

326 Mr. GREENE: That includes track and everything.
The WITNESS: And buildings?

Q. Everything. The depot is part of the terminal facilities, and the same with respect to the terminals at Lincoln.

Redirect examination.

By Mr. GREENE:

Q. State where these lands are located that are a part of the terminals, and included in your estimate, in Omaha, I mean.

A. Why, the freight grounds of our freight depot are at about the foot of Harney and Howard streets, and about from 8th street, very nearly down to the river, and then down south from there under the Union Pacific bridge to Gibson, and then from Gibson in a northwesterly direction up to the passenger station, and then from there, I should think, in about a southwesterly direction to the city limits in South Omaha.

Q. From Gibson on through the passenger station, and on through the city limits southwest is the main track isn't it?

A. Yes, sir; and there are a good many side tracks there, too.

Q. How many acres are included in what are called the Omaha terminals?

A. 115.94 acres.

Q. 115 acres?

A. Yes, sir; 115.94 acres.

Q. What in your opinion are the terminals worth, could you give an estimate, you can subsequently verify it by data.

A. I would rather wait, because I don't recall the number of miles of sidetrack we have in the City of Omaha.

Q. How many acres are there in the terminals called the Lincoln terminal?

327 A. 125.8

Q. And how much of that is in the city limits, and what portion is outside?

A. Well, that is entirely in the city limits.

Q. Extends from where?

A. Well, it would extend in different directions. We run in from every direction into Lincoln, both from the east and west and north and south.

Q. Well, the bulk of them are located where?

A. Well, I should judge right in front of—that would be west of, the passenger station, most of them.

Q. West of the passenger station?

A. Yes sir.

Q. Can you give the value of those terminals as a whole?

A. $571,136.00.

Q. Does that include the depots and tracks?

A. No sir; just the land.

Q. Well, Mr. Brown and myself, when talking about terminals, do not mean simply the dirt, we mean the combination, the dirt, land, buildings and tracks, organized to handle the cars and the business. Now, are there any other large terminals in the State of

Nebraska, of the character of the terminals in the various cities named by Mr. Sturgis and Mr. Patton in their testimony?

A. I should think not, with the possible exception of South Omaha, that is, we don't have—our terminals are really on the west side of South Omaha, on the outside of the city proper.

Q. Do you know how many acres there are in that?

A. I don't know.

328 Q. About how many?

A. I don't know, I am sure, without figuring it out.

Q. Well, figure that out and give the value of the lands with the terminals in your statement. Are there terminal facilities at Hastings and McCook?

A. I would call those division stations, not terminals exactly.

Q. Are they extensive, either in character or value?

A. I should not think so particularly, no.

Q. They rank—or do they not rank—with hundreds of terminals in the various cities and villages east of the Missouri river?

A. You mean on the line of the C. B. & Q.?

Q. That is on the line of the C. B. & Q.

A. I wouldn't like to say hundreds, but they rank with Creston and some such cities as that.

The ATTORNEY GENERAL: And Ottumwa?

The WITNESS: Yes sir.

Q. And Mendota?

A. Yes sir; Mendota.

Q. That were not mentioned in the testimony of Mr. Patton or Mr. Sturgis?

A. Yes sir.

Q. You may look at Exhibit 7, and state what it purports to be.

A. It is a memorandum of low and high sales of C. B. & Q. stock from May 26th, 1900, to August 9th, 1901, inclusive, and the number of shares sold daily.

The ATTORNEY GENERAL: In what market.

The WITNESS: The New York Market.

329 Q. By whom was it compiled?

A. I had it compiled by Mr. James G. Taylor, who used to be Auditor and Assistant Auditor of the lines west of the Missouri River.

Q. Have you, in a way, verified any part of it, so that you could state an opinion as to whether it was correct or not?

A. Well, I can't say that, but I believe it is correct.

Mr. GREENE: I will offer this Complainant's Exhibit 7 referred to, in evidence.

The ATTORNEY GENERAL: We object to it for the reason that it shows transactions entirely too remote, and it is therefore immaterial and irrelevant.

Mr. GREENE: But you do not object to it on the ground of incompetency.

The ATTORNEY GENERAL: No.

NOTE BY THE EXAMINER.—The Exhibit referred to is read in evidence by the witness, see page 108.

330 COMPLAINANT'S EXHIBIT No. 7, C. W. P.

Memorandum of Low and High Sales of C., B. & Q. Stock from May 26th, 1900, to Aug. 9th, 1901 (Inclusive), and Number of Shares Sold Daily.

Date.	Low.	High.	No. of shares sold daily, quotations being from Saturday to Friday.
1900.			
May 26	126	116½	No record
28	125⅞	127⅜	21110
29	127	128¼	17470
30	.....	.....	.....
31	128⅛	129¾	10900
June 1	129⅜	131¼	25965
2	130⅝	131½	6460
4	129¼	130⅞	17785
5	128⅞	129⅜	12905
6	128¼	129¼	10195
7	128	129	1550
8	127¼	128½	10840
9	126¼	127	8220
11	126¾	127½	11395
12	126½	127½	7362
13	127⅛	128	13060
14	126⅝	127⅝	8950
15	126⅜	127¼	6900
May 26–June 15—1900 inc.			
331			
June 16	124⅜	126	17750
18	123¼	124⅝	31190
19	123⅞	125	13257
20	123½	125⅛	11425
21	123½	125	23475
22	123¼	124¾	19450
23	121½	123¾	16262
25	120½	122⅝	35750
26	122⅜	123½	15030
27	121⅞	123½	15280
28	121⅝	123⅝	16985
29	123½	124⅜	9260
30	123⅛	123¾	3305
July 2	123¾	125¼	13175
3	124¾	125¾	10410
4	.....	.....	.....
5	123½	125⅝	10675
6	124¾	126¼	9380

Date.	Low.	High.	No. of shares sold daily.
1900.			
July 7	124¼	125¼	3300
9	124⅜	125¼	5050
10	124½	126⅜	14610
11	125⅜	126½	11470
12	125¼	126¼	6695
13	124¼	125¼	7975
June 16–July 13—1900, inc.			
332			
July 14	123¾	124¼	6200
16	124	125⅜	14565
17	125	126⅛	12565
18	125½	126½	7961
19	125	125⅜	3760
20	125¼	126⅛	7110
21	125¼	126½	2645
23	126⅛	128¼	15535
24	126⅛	127⅜	8777
25	125¼	126⅛	7120
26	125¼	126⅛	6410
27	126⅛	127½	10240
28	126⅛	127⅛	3100
30	125¼	126⅜	10494
31	125¼	126¼	9960
Aug. 1	125⅜	126¼	11820
2	125¼	126½	2475
3	126¼	127¼	11770
4	126¼	127¼	1589
6	126⅛	127⅛	4540
7	126	126½	2450
8	125¼	126⅜	2950
9	125½	123⅜	2190
10	125¼	126⅜	5450
July 14–Aug. 10—1900, inc.			
333			
Aug. 11	126¼	126½	1210
13	126⅛	127¼	7560
14	126⅜	127⅜	4900
15	127⅛	128¼	10940
16	127	128¼	8870
17	126⅛	127⅛	4265
18	127	127½	1850
20	125⅛	125⅞	5850
21	125¼	126	2400
22	125⅛	126	910
23	125¼	125⅜	3550
24	125¼	125½	2625

Date.	Low.	High.	No. of shares sold daily.
1900.			
Aug. 25	124⅞	125⅛	2325
27	124¼	124½	6415
28	123½	124⅜	5860
29	124⅜	125¼	4735
30	125	125⅜	2820
31	124⅜	125⅝	2010
Sept. 1	.....	.....	.....
3	.....	.....	.....
4	124⅞	125⅜	2185
5	125⅛	126¼	4700
6	125⅞	126	700
7	125⅜	125⅞	2290
Aug. 11–Sept. 7—1900, inc.			
334			
Sept. 8	125	125⅛	1800
10	125	125½	1540
11	125¼	125⅞	2781
12	125¼	125⅞	1815
13	124⅞	125¼	3710
14	124	125⅛	6100
15	122½	123⅞	15960
17	122½	123¼	8925
18	123¼	123¼	4425
19	121⅞	123¼	14540
20	120½	122	18685
21	120¼	121⅜	11770
22	120¼	121	5155
24	120½	121½	10888
25	120½	121½	10985
26	120⅝	122	11885
27	121¼	123¼	17330
28	121⅞	123⅜	9000
29	121⅝	123	6250
Oct. 1	123	124⅛	12160
2	123½	124¼	6510
3	123¼	126¼	19065
4	125⅞	126⅞	21290
5	125⅞	127	12680
Sept. 8–Oct. 5—1900.			
335			
Oct. 6	126	126⅜	6210
8	125	125⅞	10920
9	124⅝	125⅛	7988
10	124½	125¼	4710
11	124½	125	4300
12	125⅛	125⅜	7950
13	125⅛	126½	4560

Date.	Low.	High.	No. of shares sold daily.
1900.			
Oct. 15	126⅛	127½	13695
16	126¼	127⅜	8990
17	126⅜	127¼	4574
18	126¼	126⅞	5446
19	127	128⅛	8045
20	127⅝	128⅜	4950
22	128⅛	129⅞	15735
23	128⅛	128⅞	4730
24	128⅜	129½	7685
25	128	128⅜	4014
26	127	128⅛	4550
27	127⅛	128⅜	2050
29	126⅜	127¼	3260
30	126⅞	127⅞	2350
31	127⅛	128	2317
Nov. 1	127⅛	127½	1915
2	127⅛	127⅞	3035
Oct. 6–Nov. 2—1900, inc.			
336			
Nov. 3	127⅞	128⅞	4500
5	129	130	7280
6	.....	.....	.....
7	130	132	27950
8	131⅛	132	11725
9	131¼	133⅜	28950
10	133¼	134	9650
12	133	134½	22560
13	132	133⅜	11900
14	132	133	13900
15	132½	134½	21700
16	134¼	137½	58800
17	138⅜	138½	13600
19	135⅜	137	15000
20	135½	137½	16000
21	137⅞	139	30200
22	136⅛	138⅜	19200
23	135⅞	137⅛	13200
24	135½	137⅜	5900
26	136½	138	10500
27	136⅜	138	11000
28	136½	137⅞	13200
29	.....	.....	.....
30	136⅜	137⅜	4900
Nov. 3–Nov. 30—1900, inc.			

337

Date.	Low.	High.	No. of shares sold daily.
1900.			
Dec. 1	136⅜	136⅞	3000
3	136⅜	137⅛	6000
4	135	136¼	6600
5	135½	136	7000
6	135⅞	136⅝	6900
7	135⅞	135⅞	5300
8	134¼	134⅝	4200
10	134⅞	135⅜	4100
11	135⅜	136½	6550
12	136⅞	137⅝	12495
13	136½	138	8000
14	136½	138⅞	20180
15	138⅛	139	8000
17	138⅜	139⅞	17100
18	137⅞	139	13300
19	138⅛	139½	19200
20	138⅞	140⅜	38100
21	138⅞	141¼	22300
22	141⅜	142⅛	14100
24	.....	.....	.....
25	.....	.....	.....
26	140⅞	142⅜	23200
27	140	142½	32300
28	141⅛	144	40100
Dec. 1–Dec. 28—1900 inc.			

338

Dec. 29	141⅞	143½	11100
31	142	144	33200
1901.			
Jan. 1	.....	.....	.....
2	142	144	20400
3	138⅞	141½	31700
4	138¼	143¼	28500
5	142½	144⅞	41500
7	142⅜	148½	131400
8	144½	147⅞	51500
9	144⅞	147½	26500
10	143⅞	145⅜	33500
11	144⅜	145½	14800
12	145½	147	16700
14	144	145⅞	15800
15	142½	144¼	17800
16	143⅜	146⅞	74615
17	143⅜	145	22900
18	142	144	20100
19	141⅛	143⅜	10600

Date.	Low.	High.	No. of shares sold daily.
1901.			
Jan. 21	140½	142	24900
22	142	143⅝	20800
23	142¼	144¼	19400
24	141⅜	143	14800
25	141⅜	142½	7500
Dec. 29—1900, Jan. 25—1901, inc.			
339			
Jan. 26	142¾	143½	14200
28	143	145½	42800
29	142⅝	144⅛	14300
30	143½	144⅝	13600
31	144⅛	145	17900
Feb. 1	145⅛	146	25700
2	.....	.....	.....
4	145¾	147⅛	21000
5	146⅛	147½	20600
6	147	148¼	23700
7	140⅞	143½	17300
8	140½	141½	12600
9	140½	141½	7000
11	140⅜	141¼	8900
12	.....	.....	.....
13	138¾	141⅜	10800
14	138½	139⅝	11100
15	138½	143¾	42600
16	142¾	145⅛	77500
18	144¼	147	151700
19	144⅜	146½	52900
20	143⅝	144⅞	69800
21	143	145	27000
22	.....	.....	.....
Jan. 26–Feb. 22, 1901, inc.			
340			
Feb. 23	.....	.....	.....
25	144	146¼	24000
26	144	145½	21100
27	144	145	10300
28	143½	144⅞	9700
Mar. 1	143¼	145¼	32700
2	144¼	145	6900
4	144¾	146	28200
5	145	148¼	77600
6	148¾	150½	95200
7	148	149⅝	41100
8	147⅞	150⅜	71100
9	148¼	149¾	14200
11	149	151⅛	45200

Date.	Low.	High.	No. of shares sold daily.
1901.			
Mar. 12	150⅝	151¾	55300
13	151½	152⅝	42200
14	151⅜	152⅜	28000
15	152⅛	155½	107400
16	154⅞	161¼	111100
18	161	165	141000
19	163⅛	168	171800
20	162	166¼	90900
21	162¾	164¾	64200
22	164¾	167¾	91100
Feb. 23–Mar. 22—1901—inc.			
341			
Mar. 23	165¼	166⅜	13600
25	163	166	33100
26	163½	167¾	100
27	167	169½	145600
28	167¾	171½	89700
29	169½	175	117000
30	173¾	176½	47900
Apr. 1	172¼	174¾	33500
2	172⅝	180⅛	154600
3	180⅞	188⅛	175200
4	182¾	187⅛	120900
5	.....	.....	.....
6	.....	.....	.....
8	181⅝	187	65500
9	183	18[illegible]	131300
10	186¾	19[illegible]	179700
11	187	19[illegible]	90700
12	187½	191¼	79100
13	189¼	191½	34100
15	188	191	33100
16	187½	195	167100
17	192¾	195½	61400
18	192⅝	194½	54100
19	194	195¾	44100
Mar. 23–Ap'l 19—1901, inc.			
342			
Ap'l 20	193	195	13800
22	193¼	194⅞	52400
23	194¾	196¾	78300
24	195⅝	196¾	24900
25	196¼	197⅜	28400
26	197⅜	199	40100
27	.....	.....	.....
29	198⅞	199½	26100
30	198¾	199⅞	35800

Date.	Low.	High.	No. of shares sold daily.
1901.			
May 1	198½	199⅜	33800
2	198⅛	199	15200
3	197½	198¼	27500
4	197½	198	8100
6	196⅜	198	18200
7	196	198¾	25300
8	186	196	67300
9	178	193	23400
10	185½	192½	22600
11	.....	.....	.....
13	190	192½	7500
14	189¼	191	8200
15	189⅝	195	18100
16	194¾	195½	6800
17	196	198¼	12900
Ap'l 20–May 17—1901, inc.			
343			
May 18	197	197½	8600
20	197½	197½	7800
21	195½	196	7500
22	195¾	196	2700
23	195	195¾	1900
24	195	195¾	8700
25	195⅞	196	1900
27	195½	196	2400
28	195½	195¾	900
29	193⅜	195½	700
30	.....	.....	.....
31	195¼	195¾	3100
June 1	196	196½	2000
3	196¼	196⅝	4900
4	196¼	196¾	1400
5	196½	196⅞	400
6	196½	196¾	1200
7	196⅝	196⅝	500
8	196¾	196¾	100
10	196½	196¾	1500
11	196⅞	197	600
12	196½	196⅝	300
13	196⅞	196⅞	100
14	196⅞	197	900
May 18–June 14—1901, inc.			
344			
June 15	196½	196½	100
17	196½	196½	500
18	196⅜	196⅞	300

Date.	Low.	High.	No. of shares sold daily.
1901.			
19	196⅝	196¾	500
20	None	None	None
21	196¾	196¾	None
22	196⅝	196⅝	100
24	None	None	None
25	196½	196¾	900
26	196½	196¾	400
27	196½	196⅞	1600
28	196⅞	196⅞	100
29	196⅞	197	300
July 1	197	197½	2100
2	197½	198	500
3	197	197	250
4	None	None	None
5	None	None	None
6	None	None	None
8	196½	197	110
9	196¼	196½	533
10	196½	196½	500
11	195¼	195½	1300
12	194½	195½	800

June 15–July 12, 1901, inc.

345

July 13	195	195	900
15	193¾	194	400
16	None	None	None
17	None	None	None
18	195	195¼	400
19	None	None	None
20	None	None	None
22	195	195	100
23	None	None	None
24	None	None	None
25	195¾	195¾	100
26	.....	None	None
27	None	None	None
29	None	None	None
30	197	197	100
31	None	None	None
Aug. 1	None	None	None
2	None	None	None
3	None	None	None
5	None	None	None
6	None	None	None
7	None	None	None
8	None	None	None
9	None	None	None

July 13–Aug. 9, 1901, inc.

346 Said Complainant's Exhibit No. 7 bears the following endorsement:

Memorandum of low and high sales of C. B. & Q. stock, from May 26th, 1900, to Aug. 9th, 1901, (both dates inclusive) and number of shares sold daily.

End of Complainant's Exhibit No. 7, C. W. P.

347 Q. Now, during this period covered by the schedule marked Exhibit 7—State whether or not any of the C. B. & Q Stock has been quoted on the market since July 30th, 1901?

A. I believe not; I have never seen it.

Q. It is not in the market?

A. No sir.

Q. Not for sale?

A. No sir.

Q. Now, during the part of the period covered by this statement, there was a struggle upon the part of certain interests to obtain control of the Chicago, Burlington & Quincy railroad property, was there not?

The respondents object to this as being incompetent, irrelevant and immaterial.

A. Yes sir.

Q. And what period of the time mentioned was that struggle or contest going on, approximately?

The respondents object to this as being incompetent, irrelevant and immaterial.

A. I should think the Spring of 1901, before what is known as the merger existed.

Q. Before the merger?

A. Yes sir.

Q. Who represented the interests that were seeking to obtain control? I mean what individual?

A. Why Messrs. J. J. Hill and Harriman, I believe.

Q. They were the contestants?

The respondents object to this as incompetent, irrelevant and immaterial.

A. Yes sir .

348 Q. During that time of the contest between Hill and Harriman——

A. I don't know whether it was between Hill and Harriman——

Q. Oh, well, that is the way the public knows it; there is no use of being microscopic. During that struggle, state what effect it had on the market price.

Respondents object to this as being incompetent, irrelevant and immaterial, too remote, and no foundation laid.

A. The stock went up from about $120.00 a share in June 1900, to something over $198.00 a share in May 1901.

Q. What was the result of that contest, as known to the general public?

Respondents object to this as being incompetent, irrelevant and immaterial, too remote and no foundation laid.

A. That the Hill interests obtained control of the Burlington road.

Q. And immediately after that, was there any stock,—any market for the stock, or any market price quoted?

A. I have not seen any, no sir.

Q. What other railway interests did Mr. Hill and his associates represent, or——

A. Why, the Great Northern and the Northern Pacific.

Q. Until this contest began, what was the history of this sale and market price of the C. B. & Q. Stock?

Respondents object to this as being incompetent, irrelevant and too remote, and no foundation laid.

A. I think about 10 years ago, the stock sold for less than $60 a share.

349 Q. That was in the depressed time?

A. Yes sir.

Q. Then it gradually rose to what point, approximately?

A. It went up to probably as high as $150.00. My communication to the state board of equalization of Nebraska in May 1904 shows the high and low sales for the years 1891 to 1901, inclusive.

Q. And was that showing made by you after a careful investigation?

A. Yes sir.

Q. And it is on file?

A. Yes sir; with the state board, and is now.

Q. I will ask you to read the years and the prices, the high and low average for the years 1891 to 1901, inclusive.

The respondents object to this as being incompetent, irrelevant and immaterial; too remote and no foundation laid.

The witness here reads the statement referred to, which is as follows:

(See next page.)

350 "The average value of C. B. & Q. R. R. Co. stock for eleven years, being the last that was quoted, was $102.27 per share. This is shown by the following table, which gives the highest and lowest quotations for each of the years from 1891, inclusive, to 1901, inclusive:

Year.	High.	Low.	Average.
1891	109 Dec	75 March	92
1892	110 Jan	95 Sept	102½
1893	103 Jan	69 July	86
1894	84 Mar	68 Dec	76
1895	92 July	69 March	80½
1896	83 Nov	53 Aug	73
1897	102 Sept	69 Jan	85½
1898	125 Dec	85 March	105
1899	149 Feb	114 Dec	131½
1900	144 Dec	119 Jan	132
1901	192 April	138 Jan	165

Taking the average value of the stock as reflected by the market quotations during said period of eleven years, the approximate value of the entire stock is 1,108,391 shares at $102.27 per share."

351 Q. Mr. Pollard, I call your attention to the proportion of the business in Nebraska—the proportion that it bears to the total business of the company, and ask you what if any rule obtained with respect to mileage in the state, called constructive mileage?

A. On the first day that I appeared before the state board, I read to the state board C. B. & Q. G. F. O. No. 856, which is the Division Sheet for freight traffic, and it reads as follows:

Q. Well, never mind that. I withdraw that question.

Q. (continued). Do you know, or not, what the rule is?

A. Yes sir.

Q. Well, what is it?

A. On freight business, other than purely local, the lines west of the river are allowed one and four-tenths miles for each actual mile.

Q. Now, how is that rule promulgated, in what form, by a published circular?

A. Yes sir.

Q. Have you it?

A. I have.

The circular referred to is here marked Complainant's Exhibit No. 8.

Q. Look at Exhibit 8 and state what it is?

A. (Reading:) Earnings on traffic above described——

Q. No; I don't care about your reading it, what is it—what is that sheet?

A. It is "Division Sheet for Freight Traffic."

Q. Is that the rule as promulgated and enforced?

352 A. Yes sir.

Q. Is it observed in the system?

A. Yes sir.

Q. How long has it been in force, so far as you know?

A. This is effective January 1st, 1903, and prior to that time there was a different division of earnings; prior to that time the division was more favorable to the lines west of the river than this sheet is.

Q. What do you mean by that?

A. That is, the lines west of the river got a bigger proportion somewhat of the earnings.

The complainants now offer in evidence Exhibit 8, being the "Division Sheet for Freight Traffic" as above referred to.

The respondents object to this as being incompetent irrelevant and immaterial.

The Exhibit referred to is as follows:

(See next page.)

353 COMPLAINANT'S EXHIBIT No. 8, C. W. P.

C B & Q. G. F. O. No. 2856.
H & St. J. G. F. O. 1126.
Cancels all conflicting instructions.
Quincy Route No. 937. B & M G. F. O. 1109.

Burlington Route.
Chicago, Burlington & Quincy Railroad.
Chicago, Burlington & Quincy Railway Company, Lessees.
St. Louis, Keokuk & Northwestern R. R.
Hannibal and St. Joseph Railroad.
Chicago, Burlington & Kansas City R. R.
Kansas City, St. Joseph and Council Bluffs R. R.
Keokuk & Western R. R.
Burlington & Missouri River R. R. in Nebraska.
Chicago, Burlington and Quincy Railway Co., Lessees.
Jacksonville and St. Louis Ry Co.
Quincy, Omaha and Kansas City R. R. Co.

Division Sheet for Freight Traffic.

Interchanged by above named lines, including all such traffic originating at or destined to points on or beyond said lines, in which two or more of same are interested.

Effective January 1, 1903.

Earnings on traffic above described will be divided between above named lines on a straight mileage pro-rata, excepting that the B & M R R R in Neb., will be allowed in such division a constructive mileage of 1.4 miles for each actual mile.

Arbitraries paid to roads, etc., not parties hereto will be deducted before prorating; other arbitraries to be disregarded.

354 Note 1.

On traffic to or from points on the J. & St. L. Ry., which is handled by C. B. & Q. R. R. train service to or from Jacksonville, the C. B. & Q. R. R. will be allowed mileage to and from Jacksonville and necessary payments to the Wabash Railroad in such cases (for use of its track) will be made in interline account, out of C. B. & Q. R. R. earnings so determined. On J. & St. L. business handled by the Wabash Railroad between Jacksonville and Chapin, the Wabash proportions as named in separate issue, will be deducted before prorating (and allowed to the Wabash Railroad in interline account).

Note 2.

In dividing earnings with lines not parties hereto, the revenue for such outside lines will first be determined under current divisions with such roads (which will not be affected by the above) and the

remaining revenue will be sub-divided between lines parties hereto on above basis; separate sub-settlements being made, in so doing, wherever same may be necessary to preserve the integrity of existing divisions with outside lines.

Auditors of Freight Accounts will receive detailed instructions from the General Auditor.

D. O. IVES,
G. F. A B & M R R R in Neb.
THOS. MILLER,
F. T. M. C B & Q Ry.
W. GRAY,
G. F. A. St. L. K & N. R. R. H & St. J. R. R.
K & W R R., K. C. St. J. & C. B. R. R., C. B. & K. C. R. R.

L. F. MOORE,
GFA. Q. O. & K. C. R. R.
W. E. CRANE,
GFA J & St. L. Ry Co.

End of Complainant's Exhibit No. 8, C. W. P.

355 Q. Under the operation of that rule, how much credit would the Nebraska lines get for every hundred miles actually hauled?

A. Exclusive of purely local business, they got 140 miles for every 100 miles.

Q. Is that a mere matter of book keeping in the company?

A. Yes sir.

Q. Do I understand that relates to anything except the interstate or intra-state business?

A. No sir; it does not.

Q. Now, as I understand you, that rule applies to all business passing through the state, or originated in the state, destined to points outside of the state?

A. Yes sir.

Q. Regardless of what it is called?

A. Yes sir.

Q. What earnings were reported to the Board for the assessment and taxation of 1904?

A. The gross earnings in Nebraska for the year ending June 30th 1903 were $15,562,600.81.

Q. And what was the expense, the operating expense?

A. $8,290,615.69.

Q. And what was the amount of taxes?

A. $500,063.88.

Q. What then was the net earnings of the lines in Nebraska, reported?

A. $6,771,921.24.

Q. Does that include the extra, or what you call the constructive mileage?

A. Yes sir.

356 Q. What would be the earnings, based upon the actual mileage in the state.

A. I can only make an estimate of that at this time, but I would say about—I would say that the net earnings would be reduced about

$1,700,000.00, that would make the net earnings in Nebraska $5,071,000.00 instead of $6,771,000.00.

Q. Was that statement put before the state board of equalization at the time they made the assessment?

A. No, sir; it was not for last year.

Q. At any time?

A. It was this year, but not last, it was not figured out in that way.

Q. Was it figured in that way?

A They didn't ask me any questions about that.

Q. Well, I know; but did the board figure it? Did you put the board in possession of this constructive mileage rule?

A. Yes, sir; I did on two occasions.

Q. When?

A. At the first meeting of the board, on May 28th, 1904, when I was called to Lincoln.

Q. Was that during the sessions of the board for the purpose of assessing for 1904?

A. Yes, sir. I received a notice on May 27th to appear before the board to testify as to the true value of the stocks and so on.

Q. On that occasion, did you state to them what the true mileage, or the true earnings were, gross or net?

A. No, sir; I didn't go into that phase of the question at that time.

357 Q. What did you do.

A. They took me under oath and asked me to swear what C. B. & Q. stock was worth.

Q. And what did you say it was worth?

A. Well; I told them I didn't believe anybody could testify intelligently as to that for the reason that it hadn't been sold for a couple of years.

Q. Did you state your opinion as to what its value was?

A. Yes, sir; I did.

Q. What was that? How much?

A. $150.00 a share, I told them I would be glad to make the estimate and I estimated it at $150.00 a share.

Q. Well, was that your estimate at that time?

A. Yes, sir.

Q. Was that your opinion of the value of the stock at that time?

A. Yes, sir.

Q. And is it now your opinion that you were then correct.

The respondents object to this as being incompetent, irrelevant and immaterial.

(No answer.)

Q. Are you of the opinion now that you were then correct?

The respondents object to this as being incompetent, irrelevant and immaterial.

A. Yes, sir; and I will give my reasons, because——

Q. I don't care about your reasons, they can get that.

A. All right.

Q. We switched off from this constructive mileage; what I under-

stood you to answer was that you have put the board in possession of the rule and custom of the C B & Q Company to allow this constructive mileage to the lines in Nebraska?

358 A. I did it in this way. I stated that on a haul of 500 miles east of the Missouri river and 500 miles west of the Missouri River, the lines west of the river would get 58.3 per cent. of the earnings, and the lines east of the river would get 41.7 per cent. of the earnings.

Q. That is the same idea expressed in other terms, isn't it?

A. Yes, sir.

Q. Now, was that statement or testimony of yours published in the newspapers at the time?

The respondents object to this as being wholly immaterial.

A. Yes, sir.

Q. In what paper?

A. In the Lincoln News of May 28th, 1904.

Q. Have you the statement?

A. Yes, sir.

Q. Just read from that clipping of the Evening News the part you refer to.

A. (Reading:) "How Traffic Charles are Fixed.—Mr. Pollard threw considerable light on the basis on which the road calculated the earnings of the Nebraska lines, and those west of the river. He exhibited a traffic division sheet of recent date, showing that for the purpose of divisions, each mile of railway in Nebraska is counted one and fourth tenth- miles. In addition, the lines west of the river are credited with 60 per cent. of the earnings on shipments from Denver to the eastern terminus of the lines at Chicago, while the line east of the river is allowed 40 per cent. of the charges. He said that the line was about evenly divided, and that these arrangements were made to favor the western lines of the system."

359 The respondents object to the item read by the witness and move that it be stricken out as being incompetent, irrelevant and immaterial.

Q. Do you know whether the board made any subtractions on account of that constructive mileage?

A. I do not.

Q. Mr. Pollard, who furnishes the state board of equalization and assessment of Nebraska with the list of property of the complainant subject to taxation in this state?

A. I do.

Q. Did you return to the board all the items covered by the statute of the state?

A. Yes, sir.

Q. In 1904?

A. Yes, sir.

Q. For the assessment of 1904?

A. Yes, sir.

Q. Did you place any valuation upon any of the items of tangible property?

A. Yes, sir.
Q. What property, generally, what class of property?
A. The bridges, buildings and rolling stock.
Q. How were the assessments made—in what name?
A. Against the different corporate divisions, sixteen of them.
Q. You may name the corporate divisions.
A. Of the C. B. & Q.?
Q. Yes, sir.
A.—
Atchison & Nebraska Railroad,
Burlington & Missouri River Railroad,
360 Chicago, Nebraska & Kansas Railroad,
Grand Island & Wyoming Central Railroad,
Kansas City & Omaha Railroad,
Lincoln & Black Hills Railroad,
Lincoln & Northwestern Railroad,
Nebraska Railway,—that is the only one that is called "Railway."
Nebraska & Colorado Railroad,
Nebraska, Wyoming & Western,
Omaha & North Platte,
Omaha & Southwestern,
Oxford & Kansas Railroad,
Republican Valley & Wyoming Railroad,
Republican Valley, Kansas & Southwestern Railroad,
Republican Valley Railroad.
Q. State whether or not the lines and properties and railroads under these designations constitute a part of the system of the complainant?
A. Yes, sir.
Q. Do they include all the lines of the complainant in Nebraska?
A. Yes, sir.
Q. And how are they generally known—by what name are they generally known?
A. As the Burlington Railroad.
Q. In your reports of these tangible properties of these different corporate divisions, you gave what?
A. I gave the numbers of acres of right-of-way——
Q. Well, I know—but the number of miles of each?
A. Yes, sir.
361 Q. The total length of the line outside of Nebraska?
A. Yes sir; where there is anything outside of Nebraska.
Q. That of course goes.
Q. The total length inside Nebraska?
A. Yes sir.
Q. What was the aggregate valuation placed by you upon all the bridges on these lines?
A. $1,744,740.00.
Q. Upon the buildings of these lines?
A. $1,221,300.00.
Q. Upon the rolling stock?
A. $4,166,681.47.

Q. What is the total of these items?

A. $7,132,721.47.

Q. Have you prepared a statement showing the return made by you of the tangible properties of these lines?

A. Yes sir.

Q. Have you it with you, have you such a statement or a copy of it?

A. They are on file with the state board.

Q. What is it that you have before you?

A. This is the assessment of the tangible property by the state board (indicating a paper).

Q. Now, what item did you return—I mean of the real estate?

A. Right of way, depot grounds, miles of main track and side track, bridges, the location value and, I think, width, height and material; buildings, the description and where located and the kind of building; number of miles of side track; the kind of ballast used; telegraph lines; rolling stock and material and so forth.

362 Q. Was the tangible property of these values valued by the board separately from all the property?

The respondents object to this, for the reason that it is not shown whether he knows, and further for the reason that it is irrelevant, immaterial and incompetent.

A. Yes sir.

Q. Do you know whether it was or not?

A. Yes sir; it was.

Q. Have you seen the records of the board?

A. Of the assessment of the tangible property, yes sir.

Q. I will ask you to state what this book is (handing witness a book).

A. (Reading the title on the back of the book:) "Record of the State Board of Equalization and Assessment of the State of Nebraska."

Q. I call your attention to page 19 of that record, or rather to pages 18 and 19, and ask you to read the resolution appearing on that.

The respondents object to this as being incompetent, irrelevant and immaterial.

A. (Reading the resolution referred to:) "Board convened with all members present. After a great deal of discussion as to different methods, State Auditor Chas. Weston, offered the following 'As a preliminary step to the ascertainment of the actual value of all property of railroads in this State, required to be assessed for purposes of taxation, I move that we proceed to make an estimate of the actual value of the tangible property of the various railroads subject to assessment by this board, and that said actual value so ascertained, be taken as one of the factors in making up the assessments

363 of said roads.'

Upon a second of said above motion by George W. Marsh, Secretary of State, the President put the motion and called for ob-

jections. State Treasurer Mortenson requested time to propose an amendment, and the same was granted.

Board took a recess until 9:00 o'clock, Tuesday the 17th."

Q. Will you turn to the record of the proceedings on Tuesday the 17th, pursuant to the adjournment, and state what page they appear on?

A. Pages 19 and 20. I find under date of Tuesday, May 17th, 9 o'clock:

"The board convened with members present. State Treasurer Mortensen offered the following amendment to the motion pending: 'Amendment: I move an amendment to Mr. Weston's motion, that as required by the revenue laws of the State of Nebraska, we, the State Board of Equalization and Assessment, having carefully examined the returns furnished this Board by the proper officers of the Nebraska Division of the Chicago & Northwestern Railway Company, do value the said Nebraska Division of the said Chicago & Northwestern Railway, including its main tracks, side tracks, warehouse, tracks, road-bed, right of way, and depot grounds, and all water and fuel stations, buildings and super-structures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies provided for operating said railway, in whole or in part, together with the money and credits, franchises and all other property of said railway company as pertaining to their said Division in this state, used
364 or held for the purpose of operating its railway in the sum of three million seven hundred and forty-five thousand dollars, and same being based on a valuation of $35,000.00 per mile, on a total mileage of 1070.08 miles in this state.'

Mr. George D. Follmer, Commissioner of P. L. & B. seconded the Amendment. Said amendment being put, was defeated by the following vote. Aye: Mortensen and Follmer; Nay. Mickey, Weston and Marsh. The original motion was then called for, and was declared carried by the following vote: Aye: Mickey, Weston Marsh and Follmer. Nay: Mortenson. The Secretary was instructed to tabulate the entire tangible property as returned, for the benefit of the Board, and a recess was then taken until Thursday, at 9:00 o'clock."

Q. State whether or not you know what valuations were placed by the board upon the tangible property of these lines in Nebraska?

A. I do, yes sir.

Q. Have you a memorandum of the assessments which were made, or the valuations made.

The respondents object to this testimony for the reason that it is incompetent, irrelevant and immaterial for this witness to testify what the Board did.

A. Of the tangible property, yes sir.

Q. Your knowledge of what they did is acquired how?

A. From figures and the records at Lincoln, which I got from the Secretary, Mr. George D. Bennett.

Q. Will you state how much was added to the aggregate valuation

which you returned upon the bridges, the buildings and the rolling stock?

365 A. 25 per cent.

Q. How much was that in dollars and cents?

A. It adds, $1,784,180.35.

Q. I will ask you to state if you know from your investigation of the records, and proceedings of the board, and from your conversation with members of the board and the secretary, whether or not the Board in fact ascertained and declared the value of the tangible properties of the Burlington Company in Nebraska, as a part of their proceedings?

A. They did ascertain the value of the tangible property, yes sir.

Q. Now, how much did they find the value of the acres of land in the Atchison & Nebraska Railroad; state the acres and the valuation.

A. The acres are 1780½; valuation $331,451.00.

Q. State what valuation they put upon the bridges of the lines of the Burlington under the name of the Atchison & Nebraska?

A. The valuation I put on them was——

Q. No, no; I don't ask that. What did they say?

A. $418,450.00.

Q. The buildings—what valuation did they put upon the buildings?

A. $28,850.00.

Q. What valuation did they put upon the main tracks?

A. $1,127,397.40.

Q. What valuation did they put upon the side tracks?

A. $92,520.00.

Q. What upon material, and so forth?

A. $17,958.01.

Q. What upon the rolling stock?

366 A. $251,882.10.

Q. The telegraph?

A. $14,948.00.

Q. And what was the aggregate valuation of all of these items?

A. $2,282,456.51.

Q. I will ask you to look at Exhibit 9 and state what it is.

A. It is a detailed statement of the valuation of the tangible property put by the Board of Equalization on the 16 different corporate divisions of the Burlington for the year 1904.

Q. In your testimony you have given the items with respect to the Atchison & Nebraska Railroad, have you?

A. Yes sir.

Q. That appears here in this statement?

A. Yes sir.

Q. Now are those items appearing in this statement under the different corporate divisions, which constitute the Burlington lines in Nebraska correct?

A. Yes sir.

The complainants now offer in evidence Exhibit 9, being the detailed statement above referred to, which is as follows:

(See next page.)

367 COMPLAINANT'S EXHIBIT No. 9, C. W. P.

Atchison & Nebraska R. R.

Acres, 1,780.50	331,451.00
Bridges 334,760.00 ¼ added	418,450.00
Buildings, 23,080.00 " "	28,850.00
Main Track 108.04 miles	1,127,397.40
Side Track 23.13 "	92,520.00
Material, etc	17,958.01
Rolling Stock, 201,505.68 ¼ added	251,882.10
Telegraph	14,948.00
	$2,282,456.51

Valuation per mile $21,126.00
Assessment " " 50,000.00

Burlington & Missouri River R. R.

Acres, 4,467.76	$1,460,347.67
Bridges $244,550.00 ¼ added	305,687.50
Buildings 215,470.00 " "	269,337.50
Main Track 191.61 miles	2,107,710.00
Side " 95.78 "	383,120.00
Material, etc	853,093.83
Rolling Stock 1,009,570.21 ¼ added	1,261,962.76
Telegraph	69,246.50
Telephone	5,000.00
	$6,715,505.76

Valuation per mile $35,047.00
Assessment " " 77,350.00

368 Chicago, Nebraska & Kansas R. R.

Acres, 66.12	$4,959.00
Bridges, 2,170.00 ¼ added	2,712.50
Buildings, 1,270.00 ¼ "	1,587.50
Main Track 5.28 miles	55,096.80
Side " .64 "	2,560.00
Material, etc	362.70
Rolling Stock, 659.00 ¼ added	823.75
Telegraph	1,350.00
	$69,452.25

Valuation per mile, $13,154.00
Assessment per mile 25,000.00

Grand Island & Wyoming Central R. R.

6,292.41 acres	$131,509.10
Bridges, 70,950.00 ¼ added	88,687.50
Buildings, 152,855.00 ¼ added	191,068.75

Main Track, 352.44 miles	3,677,712.40
Side Track 54.62 "	218,480.00
Material, etc	173,728.88
Rolling Stock, 660,453.98 ¼ added	825,567.47
Telegraph	105,732.00
Telephone	21,620.00
	$5,434,106.10

Valuation per mile $15,419.00
Assessment per mile 32,500.00

369 Kansas City & Omaha R. R.

Acres, 2,649.64	$276,585.25
Bridges 42,050.00 ¼ added	52,562.50
Buildings 27,045.00 ¼ added	33,806.25
Main track, 193.08 miles	2,014,789.80
Side track 12.08 "	48,320.00
Material, etc	7,832.34
Rolling stock, $47,162.50 ¼ added	58,953.12
Telephone	1,880.00
	$2,494,729.26

Valuation per mile, $12,921.00
Assessment " " 25,000.00

Lincoln & Black Hills R. R.

Acres, 2,327.00	$97,069.60
Bridges, 56,480.00 ¼ added	70,600.00
Buildings, 40,000.00 " "	50,000.00
Main track, 176.61 miles	1,842,925.35
Side track, 15.14 "	60,560.00
Material, etc	8,656.53
Rolling stock, $66,444.00 ¼ added	83,055.00
Telegraph	37,607.00
	$2,250,473.48

Valuation per mile, $12,743.00
Assessment " " 27,500.00

370 Lincoln & Northwestern R. R.

Acres, 973.03	$155,140.60
Bridges 37,860.00 ¼ added	47,325.00
Buildings, 11,410.00 ¼ added	14,262.50
Main Track, 73.49 miles	766,868.15
Side " 7.47 "	29,880.00
Material, etc	11,626.04
Rolling stock, 15,346.50 ¼ added	19,183.12
Telegraph	11,023.50
	$1,055,308.91

Valuation per mile, $14,360.00
Assessment per mile 32,500.00

Nebraska Railway.

Acres 1,858.86	$331,457.00
Bridges, 185,950.00 ¼ added	232,437.50
Buildings 32,345.00 " "	40,431.25
Main track 136.74 miles	2,426,881.90
Side " 27.23 "	108,920.00
Material, etc	12,081.75
Rolling stock, 208,977.50 ¼ added	261,221.88
Telegraph	7,894.50
	$3,421.325.78

Valuation per mile, $25,020.00
Assessment " " 40,000.00

371 Nebraska & Colorado R. R.

Acres, 5,757.73	$549,067.25
Bridges 87,440.00 ¼ added	109,300.00
Buildings 95.970.00 ¼ added	119,962.50
Main track, 430.71 miles	4,494,458.85
Side track, 41.37 "	165,480.00
Material, etc	46,499.07
Rolling stock, 336,615.00 ¼ added	420,768.75
Telegraph	92,924.50
Telephone	2,960.00
	$6,001,420.92

Valuation per mile, $13,934.00
Assessment " " 30,000.00

Nebraska, Wyoming & Western R. R.

Acres, 2,406.55	$100,039.95
Bridges, 60,740.00 ¼ added	75,925.00
Buildings, 29,885.00 ¼ added	37,356.25
Main track, 140.79 miles	1,469,143.65
Side " 13.89 "	55,560.00
Material, etc	3,010.95
Rolling stock, 57,356.29 ¼ added	71,695.36
Telegraph	38,808.50
Telephone	1,260.00
	$1,852,799.66

Valuation per mile, $13,160.00
Assessment " " 22,500.00

372 Omaha & North Platte R. R.

1,286.23 Acres	$788,638.00
Bridges $188,330.00 ¼ added	235,412 50
Buildings, 24,565.00 " "	30,706.25
Main track 81.19 miles	847,217.65
Side track, 20.60 "	82,400.00

Material, etc	32,385.60
Rolling stock, 154,305.00 ¼ added	192,881.25
Telegraph	22,230.00
	$2,231,871.25

Valuation per mile $27,489.00
Assessment " " 42,500.00

Omaha & Southwestern R. R.

727.58 acres	$670,664.81
Bridges $97,450.00 ¼ added	121,812.50
Buildings 339,265.00 " "	424,081.25
Main track 51.79 miles	540,428.65
Side track 31.35 "	125,400.00
Material, etc	22,595.06
Rolling stock, 165,097.50 ¼ added	206,371.88
Telegraph	16,174.50
Telephone	5,000.00
	$2,132,528.65

Valuation per mile, $41,177.00
Assessment " " 45,175.00

373 Oxford & Kansas R. R.

842.72 acres	$73,998.00
Bridges $22,320.00 ¼ added	27,900.00
Buildings 10,835.00 " "	13,543.75
Main Line 59.61 miles	622,030.35
Side Track 4.92 " at $4,000.00	19,680.00
Material, etc	3,579.33
Rolling stock, 11,798.00 ¼ added	14,747.50
Telegraph	11,992.00
	$787,400.93

Valuation per mile, $13,209.00
Assessment " " 20,000.00

Republican Valley & Wyoming R. R.

645.57 acres	$15,138.25
Bridges $13,350.00 ¼ added	16,687.50
Buildings 7,720.00 " "	9,650.00
49.17 miles main track	513,088.95
2.46 " side " 4,000.00	10,840.00
Material, etc	762.98
Rolling stock 11,427.00 ¼ added	14,283.75
Telegraph	9,834.00
	$590,285.43

Valuation per mile, $12,005.00
Assessment " " 20,000.00

374 Republican Valley, Kansas & Southwestern R. R.

102.70 acres, at $50.00	$5,135.00
Bridges, 8,750.00 ¼ added	10,937.50
Buildings, 400.00 ¼ added	500.00
Main Track, 8.50 miles	88,697.50
Side Track, .60 " $4,000.00	2,400.00
Tools, etc	86.36
Rolling stock, $909.13 ¼ added	1,136.41
Telegraph	1,700.00
	$110,592.77

Valuation per mile, $13,011.00
Assessment " " 20,000.00

Republican Valley R. R.

Acres, 8,415.46	$794,836.20
Bridges, 291,590 ¼ added	364,487.50
Buildings, 209,185.00 ¼ added	262,481.25
Main Track, 522.18 miles	5,761,998.30
Side Track, 81.19 "	324,760.00
Material, etc	218,510.76
Rolling stock, $1,219,054.18 ¼ added	1,523,817.72
Telegraph	155,966.00
Telephone	2,846.00
	$9,409,703.73

Valuation per mile, $17,041.00
Assessment " " 50,000.00

375 Q. Now, Mr. Pollard, how are the valuations returned by you upon the bridges and buildings and the rolling stock of these various corporate divisions dealt with by the board?

A. They added 25 per cent. to my figures.

Q. Was this 25 per cent. added generally to all the bridges and all the buildings, and all the rolling stock on these lines?

A. Yes sir.

Q. I call your attention to your testimony with respect to these three items, bridges, buildings and the rolling stock, in which you testified as to the aggregate amounts valued by you and the aggregate valuation by the board. Have you a detailed statement of the figures with you?

A. Yes sir; I have.

The statement here referred to is marked for identification Complainant's Exhibit 10. Complainants now offer in evidence this detailed statement marked Exhibit 10, as an explanation of this witness's testimony, in detail.

Q. Are the items given in that statement correct?

A. Yes sir.

Exhibit No. 10 is as follows:

(See next page.)

Road.	Bridges returned at	Bridges assessed at	Buildings returned at	Buildings assessed at	Rolling-stock returned at	Rolling-stock assessed at
Atchison & Nebraska	$334,760.00	$418,450.00	$23,080.00	$28,850.00	$201,505.68	$251,882.10
Burlington & Mo. River	244,550.00	305,687.50	215,470.00	269,337.50	1,009,570.21	1,261,962.76
Chicago, Nebraska & Kansas	2,170.00	2,712.50	1,270.00	1,587.50	659.00	825.75
Grand Island & Wyo. Central	70,950.00	88,687.50	152,855.00	191,068.75	660,453.98	825,567.47
Kansas City & Omaha	42,050.00	52,562.50	27,045.00	33,806.25	47,162.50	58,953.12
Lincoln & Black Hills	56,480.00	70,600.00	40,000.00	50,000.00	66,444.00	83,055.00
Lincoln & Northwestern	37,860.00	47,325.00	11,410.00	14,262.50	15,346.50	19,183.12
Nebraska Railway	185,950.00	232,437.50	32,345.00	40,431.25	208,977.50	261,221.88
Nebraska & Colorado	87,440.00	109,300.00	95,970.00	119,962.50	336,615.00	420,768.75
Nebraska, Wyo. & Western	60,740.00	75,925.00	29,885.00	37,356.25	57,356.29	71,695.36
Omaha & North Platte	188,330.00	235,412.50	24,565.00	30,706.25	154,305.00	192,881.25
Omaha & Southwestern	97,450.00	121,812.50	339,265.00	424,081.25	165,097.50	206,371.88
Oxford & Kansas	22,320.00	27,900.00	10,835.00	13,543.75	11,798.00	14,747.50
Republican Valley & Wyoming	13,350.00	16,687.50	7,720.00	9,650.00	11,427.00	14,283.75
Republican Val. Kan. & So. W't'n	8,750.00	10,937.50	400.00	500.00	909.13	1,136.41
Republican Valley	291,590.00	364,487.50	209,185.00	262,481.25	1,219,054.18	1,523,817.72
	$1,744,740.00	$2,180,925.00	$1,221,300.00	$1,527,625.00	$4,166,681.47	$5,208,351.82

	Returned at	Assessed at
Bridges	$1,744,740.00	$2,180,925.00
Buildings	1,221,300.00	1,527,625.00
Rolling Stock	4,166,681.47	5,208,351.82
	$7,132,721.47	$8,916,901.82
		7,132,721.47
Amount arbitrarily added by State Board		$1,784,180.35

377 Q. When you speak of the total miles of railroad, how is it measured, by the number of tracks on the right of way, or by the length of the right of way?

A. By the number of miles of main track.

Q. Where there is a double track, do you double the mileage for the double track, or do you count the double track as one mile?

A. We call the double track one mile, and return it as so many miles of double track.

Q. So the eight thousand and odd miles of the lines of the Burlington system do not include—or would be the same, if there were no double track?

A. Yes sir.

Q. As though they were all single tracks?

A. Yes sir.

Q. Mr. Pollard, have you made any tender of taxes to the various county treasurers.

The respondents object to this as being wholly immaterial and irrelevant, for the reason that the answer admits the tender.

A. Yes sir.

Q. Are the amounts tendered correctly stated in the exhibit to the bill of complaint?

A. With a few corrections, which are immaterial, which we found out afterwards—with those exceptions, they are correct.

Q. Well, what are those immaterial corrections?

A. Frequently when we are paying taxes in Nebraska and other states we find that the Treasurers have made certain errors in the statements of taxes they furnished, which, however, in this
378 particular case were very immaterial, but I believe we did find a few errors in Nebraska after the tenders were made last November.

Q. Now, could you say about how much they amount to?

A. I wouldn't like to say now.

Q. Would it be $500.

—. It might be $1500. in Nebraska. I know there was some slight change that was immaterial.

Q. I will ask you if you prepared a statement of the miles of side track in Nebraska?

A. Yes sir.

Q. And what is the aggregate amount?

The respondents object to this, for the reason that the answer admits the amount of side track to be just as it is alleged in the bill.

A. 432.45 miles.

Q. Have you the detailed statement?

A. Yes sir; I have.

Q. Is it correct?

A. Yes sir.

The complainants now offer in evidence the detailed statement above referred to, which is marked Complainant's Exhibit 11, and is as follows:

(See next page.)

The witness is excused at this time, with the understanding that the Complainant has the privilege of cross examining him further at a later time.

379 COMPLAINANT'S EXHIBIT No. 11, C. W. P.

Side Track Returned for Assessment to the State Board of Equalization of Nebraska for the Year 1904.

	Miles.
Atchison & Nebraska R. R.	23.13
Burlington & Mo. River R. R. in Nebr.	95.78
Chicago, Nebraska & Kansas R. R.	.64
Grand Island & Wyoming Central R. R.	54.62
Kansas City & Omaha R. R.	12.08
Lincoln & Black Hills R. R.	15.14
Lincoln & Northwestern R. R.	7.47
Nebraska Railway	27.23
Nebraska & Colorado R. R.	41.37
Nebraska, Wyoming & Western R. R.	13.89
Omaha & North Platte R. R.	20.60
Omaha & Southwestern R. R.	31.33
Oxford & Kansas R. R.	4.92
Republican Valley & Wyoming R. R.	2.46
Republican Valley, Kansas & So. West. R. R.	.60
Republican Valley R. R.	81.19
	432.45

Main track in Nebraska, 2611 Miles.

380 Mr. GEORGE D. BENNETT, a witness on the part of the Complainants is here called and duly sworn. Being examined in chief by Mr. Charles J. Greene, he testified as follows:

Q. What is your name?
A. George D. Bennett.
Q. What is your official position, and what was it in 1904?
A. Secretary of the State Board of Equalization and Assessment of the State of Nebraska.
Q. How long have you been such?
A. Since the Board was created in 190– —December, 1903, I was appointed on the 15th.
Q. Were you acting as secretary at the time of the assessment of the Railway properties made for the tax of 1904?
A. I was.
Q. Did you attend the meetings generally and write them up for the Board?
A. I did.
Q. In the records?
A. I did.
Q. I call your attention to the record identified by Mr. Pollard in his testimony and ask you what it is?

A. That is the record of the State Board of Equalization and Assessment of Nebraska.

Q. I call your attention to pages 18 and 19 and 20 and particularly to the matter read by Mr. Pollard from the record and ask you if that is a correct statement of the proceedings?

A. It is.

381 Cross-examination.

By Attorney General BROWN:

Q. Mr. Bennett, will you turn to the first page upon which the record begins of the proceedings of the State Board of Equalization and Assessment for the year 1904, what page is that?

A. Page 14.

Q. On what page of your record of the proceedings of the Board do the proceedings of the Board for that year end?

A. On the bottom of page 29.

The ATTORNEY GENERAL: We offer in evidence pages 14 to 29 inclusive of the record, as the same have just been identified.

The pages taken together are known as Respondents' Exhibit 6, and are as follows:

See next page:

382 Q. Now, then, Mr. Bennett, have you the returns that were made by the complainant in this case of its property, for that year?

A. I have.

Q. Will you examine the paper I now hand you marked "Respondents' Exhibit 7," and state if that is one of the returns made to you by the Complainant with respect to its gross earnings, operating expenses, taxes paid and net earnings for that year?

A. It is.

Q. And also containing information on the capital stock and bonds of the Company?

A. It is.

The ATTORNEY GENERAL: Respondents now offer in evidence "Respondents' Exhibit 7."

The exhibit as referred to is as follows:

(See next page.)

383 RESPONDENTS' EXHIBIT No. 7, C. W. P.

Statement Showing the Total Gross and Net Earnings of the — R. R. Co. for the Year Ending March 31, 19—.

Statement of earnings, Operating Expenses and Taxes on the Chicago, Burlington & Quincy Railway Company's lines in Nebraska for the year ending June 30th, 1903.

Gross Earnings		$15,562,600.81
Operating Expenses		8,290,615.69
		7,271,985.12
Taxes paid		500,063.88
Net earnings		$6,771,921.24

STATE OF NEBRASKA, *County of Douglas, ss:*

I, W. P. Durkee, Auditor of the above named Railway, do solemnly swear that the above statement is true and correct, to the best of my knowledge and belief.

(Signed) W. P. DURKEE, *Auditor.*

Subscribed in my presence, and sworn to before me this 16th day of April, A. D. 1904.

(Signed) S. N. MEALIO,
[SEAL.] *Notary Public.*

384 Schedule showing the Capital Stock authorized, and the number of shares into which said Capital Stock is divided. The amount of Capital Stock paid up. The market value of such stock, or if no market value, then the true value of the shares of stock. The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road.

CHICAGO, BURLINGTON & QUINCY R. R. CO.
June 30th, 1903.

1st.

The amount of Capital Stock authorized and the number of shares into which such Capital is divided, with amount of each share.

Amount of Capital Stock, $110,839,100.00.
Number of shares, 1,108,391.
Amount of each share $100.00.

2nd.

The amount of Capital Stock paid up.

All paid up.

3rd.

The market value of such stock, or if no market value, then the true value of the shares of stock.

Understand that none has been quoted on the market for about 2 years.

4th.

The total amount of all secured and unsecured indebtedness, except for current expense of operating the road.

Funded debt	$156,050,900.00
Less securities and cash awaiting investment held in sinking fund	13,493,132.66
	$142,577,767.34

385 I, R. D. Pollard, Tax Agent of the Chicago, Burlington & Quincy Railroad Company's Lines west of the Missouri River, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief.

(Signed) R. D. POLLARD,
Tax Agent.

Subscribed in my presence and sworn to before me this 16th day of April, 1904.

(Signed) S. N. MEALIO,
[SEAL.] *Notary Public.*

386 Q. Did they return any other information to the Board in the shape—any writing, any information in writing, with respect to the earnings or the stocks and bonds of the system for that year?

A. They may have, but not that I remember.

Q. You haven't any on file except the exhibit referred to?

A. Nothing with the exception of the Annual Report.

Q. The 49th Annual Report?

A. The 49th Annual Report.

Q. Marked Exhibit 1, and introduced in this case?

A. Yes.

Q. The other information they gave you in writing referred to their tangible property, schedules of right of way and road bed?

A. Yes sir.

(Witness excused.)

387 Mr. GEORGE D. BENNETT, is here called and examined as a witness on behalf of the Respondents, having been previously sworn and examined as a witness on behalf of the Complainants. Being examined in chief by The Attorney General, he testified as follows:

Q. Now, I will ask you if in the record of the Board's proceedings heretofore identified by you, on what pages is the record of the proceedings of the State Board of Equalization and Assessment, when it was acting as an Equalization Board?

A. Beginning on page 30 and ending page 37.

The ATTORNEY GENERAL: Now the respondents offer pages 30 to 37 of the record, as heretofore identified by the witness, both pages inclusive.

Mr. GREENE: The Complainant objects to so much of the record offered, as relates to other railways and properties.

Cross-examination.

By Mr. C. J. GREENE:

Q. Calling your attention to pages 27 & 28. Now all you profess to know here was the result of the action of the Board?
A. Yes sir.
Q. Now, in fixing the valuation and assessment upon the Burlington lines you do not enter here in the record of the Board how or by what method they got at it?
A. Only as the resolution recites.
Q. Now under the resolution and under the action of the Board they valued the tangible properties separately did they not?

388 The ATTORNEY GENERAL: The respondents object to that for the reason that the record is the best evidence.

(No answer.)
Q. Have you a memorandum in your office showing how this was done?
A. There are memoranda in the office.
Q. Well, now describe the procedure they took—state whether or not, as a matter of procedure they took the tangible properties of the Burlington line and valued them separately from the other property?

Respondents object to this as being incompetent, irrelevant and immaterial, and asuming that the witness knows what the Board did, and being outside of the record.

A. The secretary was instructed——

The respondents object to this as not being responsive, and as not being the best evidence. What the Board did is recorded in the record.

A. The secretary did make tabulations of the tangible property of the Burlington Lines.

The respondents move to strike out this last answer of the witness for the reason that it is not responsive, and for the reason that the secretary is not the State Board.

Q. Was that pursuant to the resolution which is entered here on the record?
A. I suppose so, yes sir.
Q. Now what was done with this tabulated statement, if you know?
A. It is on file in the Department.

389 Q. Now in dealing with the property appearing in this tabulated statement was there a value put upon it for the purpose of valuing the entire property?

Respondents object to this as being incompetent, irrelevant and

immaterial, the witness cannot know what the purpose of the Board was, and for the further reason that the record is the best evidence.

A. The tabulations were considered.

Q. And what was done with them? What was done with the property appearing on this tabulation?

Respondents object to this as being incompetent, irrelevant and immaterial, for the reason that the witness cannot know what the purpose of the Board was, and for the further reason that the record is the best evidence.

A. I can simply say—I simply said they were considered, before.

Q. Was there any valuation put upon them?

Respondents object to this for the reason that the record is the best evidence.

(No answer)

Q. For any purpose?

Respondents object to this for the reason that the record is the best evidence, and for the further reason that it is assuming that this witness knows what was in the minds of this Board.

A. There was a valuation.

Q. Are there any papers or other records in your office, or in your possession that show this, not entered on the book?

390 Respondents object to this for the reason that the things on file are the best evidence of what they contain.

A. There are.

Q. Those that are not entered on the record?

Respondents object to this for the reason that the things on file are the best evidence of what they contain.

Question is withdrawn.

Q. Can you tell us what valuation was put on the tangible properties of the Burlington Company under the resolution of Mr. Weston which appears in the record at pages 18 & 19 ?

Respondents object to this for the reason that the record is the best evidence of what it contains.

A. Not now.

Q. Can you ascertain and report to us later?

A. Yes sir.

Q. Will you do that?

A. Yes sir.

Q. Those valuations were not entered here in the record, as made?

A. No sir.

Q. Can you state what the valuation put upon the tangible properties of the Burlington was?

A. No sir.

Q. How is that?

A. Not now.

Q. Can you ascertain and let us know?

A. I don't know as to that. I can show what the tabulations—I can return to you what the tabulations show.

Q. Whose tabulation, made by whom?

391 A. By—under the instructions of the Board.

Q. Very well. Now I call your attention to Exhibit 9, and I ask you if that is a correct copy of the records you have in your possession (referring to Complainant's Exhibit 9).

A. I can't tell without comparing it.

Q. But you have a similar record?

A. I have a tabulation of values.

Q. Which would show the acres, bridges, buildings, main track, side track, materials, rolling stock, telegraph lines, and the valuation put by the Board opposite, have you?

A. I think so.

Q. Were you present when Mr. Pollard made this exhibit, at the time he examined this matter and made up this statement from the records, at any time?

A. I presume I was.

Q. And do you know by what method or procedure the Board determined the value of the intangible properties of the Company?

A. I do not.

Q. That would not appear either in the record?

A. No, sir.

Q. You would not enter that process in the record?

A. No, sir.

Q. All the record shows is the final result?

A. Yes, sir.

Q. And all of the procedures and methods and processes would appear, if at all, in the records on file in your office or would be in the knowledge of the members of the Board and yourself?

A. Yes, sir.

392 Further cross-examination.

By Mr. JAMES E. KELBY:

Q. You have stated, I believe, that the particular records relating to the tangible property, to which Mr. Brown has called your attention, were the only papers filed by Mr. Pollard in 1904, before the Board, have you not?

A. That question was pretty broad and I didn't mean to put it that way. I mean to say that the records as I produce them here contain what he filed with the Board.

Q. I ask you to examine this paper which I hand you, which is marked for identification, Complainant's Exhibit 12.

A. Yes, sir.

Q. You may state whether or not that or a copy of it was filed with the Board in 1904?

A. It was. There is my filing mark on there (indicating).

Q. Mr. Bennett isn't it a fact that you complied strictly with the resolution of this Board and that you tabulated a statement of all the tangible properties of the Burlington Railroad in Nebraska?

Respondents object to this as calling for a conclusion of the witness.

A. I did.

Q. Now you may state whether or not the Board did, at its 1904 session, separately assess these properties as tabulated by you?

Respondents object to this as being incompetent, irrelevant and immaterial, calling for an opinion of the witness, and assuming that he knows what the Board did, and not the best evidence.

393 A. They considered them.

Q. Answer the question please, Mr. Bennett.

A. I can't do it.

Q. You say now here, under oath, that they didn't do so?

A. I didn't say that; that they didn't do it; I said I couldn't answer the question, Mr. Kelly.

Q. Did the Board make any figures with respect to the tangible property of the Burlington road?

A. They did.

Q. Separately from the general assessment?

Respondents object to this for the reason that it is incompetent, irrelevant and immaterial, calling for an opinion of the witness, and assuming that he knows what the Board did, and not the best evidence.

A. They did.

Q. But those figures are in your possession?

A. They are.

Q. And will you produce them here?

A. I will.

Redirect examination.

By the ATTORNEY GENERAL:

Q. Now these figures that you have testified about, and these computations, were simply made by you and the members of the Board during the consideration of the values of this property?

A. They were.

Q. Were they at any time finally concluded to be the judgment of the Board in respect to the items until the final judgment of the Board?

394 A. I don't know.

Q. They were simply figures made during the consideration of the subject by the Board, were they not?

A. They were.

Q. Tentative figures entirely?

Mr. KELBY: Objected to as calling for the conclusion of the witness.

No answer.

Q. Was there a vote ever taken of the Board on those figures that you have talked about at all, any roll call or vote taken on them at all?

A. Not that I remember of.

Q. If there had been it would have been in the record wouldn't it?

Complainant objects to this as calling for a conclusion of the witness.

A. Yes sir.

Witness excused.

395 Mr. CHARLES WESTON, a witness on behalf of the Complainant is here called and sworn. Being examined in chief by Mr. Charles J. Greene, he testified as follows:

Q. You may state your name?

A. Charles Weston.

Q. And where do you reside, Mr. Weston?

A. Hay Springs, Sheridan County, Nebraska.

Q. What was your official position in the state in 1904, in the state of Nebraska?

A. I was Auditor of Public Accounts.

Q. And how long were you in that position?

A. From the 3 day of January, 1901, until the 5 day of January, 1905.

Q. You were therefor- a member of the State Board of Equalization and Assessment?

A. I was.

Q. In 1904?

A. Yes sir.

Q. And during that time?

A. Yes sir.

Q. You recall the proceedings in which the properties of the Burlington Railroad Company were assessed for taxation of 1904?

A. Yes sir.

Q. Did you participate in those meetings?

A. I did.

Q. You heard the reading of the resolution offered by you at the session on May 13, 1904?

396 A. Yes sir.

Q. That resolution as offered is correct?

A. I think so.

Q. Was it adopted, as you remember?

A. Yes sir.

Q. And did you proceed under the resolution?

A. Yes sir.

Q. Did you have a tabulated statement of the tangible properties prepared by the secretary?

A. A pencil tabulation, yes sir.

Q. Now what did you do in considering the tangible properties returned by the Company?

A. After those tabulations were made we went over all the tangible property belonging to the Burlington road.

Q. For what purpose?

A. For the purpose of ascertaining its value.

Q. As a railroad?
A. As a railroad, yes sir.
Q. You considered the lines with respect to their corporate divisions in Nebraska?
A. Yes sir.
Q. Did you consider the number of acres returned in each corporate division?
A. Yes sir.
Q. Was there any valuation returned of the acres, by the Company, as you remember it?
A. I don't remember whether there was or not, but the records will show.
Q. Well, did you fix, for the purpose of the proceeding, the value of the acreage?
397 A. I believe we did, yes sir.
Q. Did you consider the bridges in each corporate division?
A. Yes sir.
Q. Did you consider the valuation put upon these bridges by the Company?
A. I think so.
Q. And did the Board ascertain and fix the value of the bridges?
A. In some instances I believe the Board did.
Q. Did you consider the buildings returned by the Company?
A. Yes sir.
Q. Were valuations also returned as to the buildings by the Company?
A. I think so, the record will show.
Q. And what is your recollection as to whether the Board did fix the value of the buildings?
A. The Board did, I believe, yes sir.
Q. Now, in respect to the main track and sidetrack and material, and telegraphs, were those items all returned to the Board and considered by the Board?
A. Yes sir.
Q. And did the Board value those items, and put a valuation upon them?
A. My recollection is that the Board passed upon the value of all items of physical property.
Q. And the rolling stock was returned with the valuation of the Company?
A. I think they returned that valuation.
Q. And the Board fixed the valuation after considering it?
A. I believe so.
398 Q. And you did this with respect to all the tangible property of all of the corporate divisions returned to the Board?
A. That is my recollection, yes sir.
Q. In fixing the values of the tangible properties you merely considered the road as completed and equipped for business did you not?
A. Yes sir.
Q. And without reference to the traffic, to its earnings or its stocks and bonds proposition?

A. We did not take those factors into consideration, when we were ascertaining the value of the physical property.

Q. Have you any means of stating what valuation was put upon the tangible property of the A & N corporate division?

A. I have no means except by reference to the memorandum that was made at that time.

Q. If you had that memorandum you could do it, could you?

A. I think so, yes sir.

Q. And could you do it with respect to all the other corporate divisions?

A. I could if the memoranda had been preserved.

Q. Was it made after or as a part of the agreement of the members of the Board as to the valuation of the tangible property?

A. In the first place all of the tangible property was tabulated with columns left for valuation, and we went over these tabulations and as the valuations for the different subdivisions of property were agreed upon these valuations were inserted in this column opposite the item.

Q. So that when you completed the work you had the valuations complete of the tangible properties?

399 A. Yes sir.

Q. So far as the Board was concerned?

A. Yes sir.

Q. And you found cases perhaps where members of the Board differed somewhat as to the value certain classes of property should be fixed at?

A. Yes, sir; there was some difference of opinion.

Q. But where there was a difference you got together and agreed?

A. Yes, sir, and the valuation that was finally agreed upon was the valuation that was inserted on the memorandum.

Q. Now what other species of property did you assume to assess, besides the tangible property?

A. We took into consideration all the species of property that are mentioned and specified by the statute.

Q. That is to say you undertook to value not only the tangible properties but what they call franchises?

A. Yes sir.

Q. That was in the judgment and theory of the Board?

A. Yes sir, it was.

Q. Was that the plan so far as it goes, upon which the Board worked?

A. Yes, sir, I think that was the theory and plan of the Board, although no record was made along that line.

Q. I am speaking of the things that you finally got together and agreed upon, whatever your individual opinions may have been. Now, Mr. Weston, when you came to value the franchises, what items or facts did you consider? Name some of the items of valuation?

A. Chiefly the valuation as shown by stocks and bonds and by the capitalization of net earnings.

Q. Well they are separate and distinct processes are they not?

400 A. Yes sir.

Q. Now we take up the stocks and bonds proposition: Did you take the amount of bonds returned by the Company, as one of the facts in the case?

A. Yes sir.

Q. That I believe is shown by the returns to be $152,000,000 and odd?

A. I don't remember what the amount is.

Q. Then you take 156 less 13 millions, whatever the record shows?

A. Yes sir.

Q. That, I take it, you accepted as a correct statement of the bonded indebtedness?

A. That is of the amount of the bonds?

Q. Of the bonded indebtedness?

A. Yes sir.

Q. And what of the value of the bonded indebtedness?

A. Well, I don't remember as to the value of the bonds. Presumably they were taken at par. I wouldn't state positively.

Q. As a matter of fact they are at par, are they not?

A. Yes sir,—well I wouldn't state positively in regard to that.

Q. If there was going to be any change at all it would be to add rather than to subtract from the par value of the bonds?

A. Probably.

Q. As a business proposition?

A. Yes sir

Q. You took the number of shares of stock reported as 1,108,391 at the par value of $100.00 a share. Do you recall the fact of whether or not you found that there was any more or less
401 number of shares, or whether you accepted that return regardless of value?

A. My recollection is that we accepted the number of shares returned by the Company.

Q. As correct?

A. Yes sir.

Q. Do you remember what you figured or determined among yourselves to be the value of the stock per share?

A. I can't say as to that. We had great difficulty in ascertaining the market value of the shares or placing any value upon them.

Q. You had before you the report or the statement of the market value of the stock up to the time it was withdrawn from the market, for a year or so, did you not?

A. I believe we did.

Q. But as to the value of the stock since it was withdrawn from the market, you have no market prices to govern you?

A. No sir.

Q. Well, have you any recollection Mr. Weston as to about what the Board said or agreed among themselves that they should call it?

A. I have no recollection as to the value that we put upon the shares, but my recollection is that we found the road to be worth from $40,000.00 to $43,000.00 a mile. Something over $40,000.00.

The ATTORNEY GENERAL: On the stock and bond basis?

The WITNESS: On the stock and bond basis.

Q. That would be the result of the calculation?

A. Yes sir.

402 Q. By dividing the total value of the stocks and bonds by the total mileage of the system?

A. Yes, sir, there as no other way to ascertain it.

Q. So that by working backwards we could get at about what the Board determined was the value of the stocks and bonds of the whole?

A. Yes sir.

Q. Then you would say that, as far as you remember, the valuation put upon the stocks and bonds was between 320 million and 340 or 342 million?

A. Yes sir.

Q. Then by deducting the bonded indebtedness we could get at the estimate of the valuation on the stock?

A. Stock valuation.

Q. That of course is the valuation upon the entire property?

A. What do you have reference to?

Q. This 320 to 342 or 3 million would include all the property of the company?

A. Yes sir.

Q. The next problem you had was to apportion it to Nebraska Lines, and if I understand you, we have worked out this problem on a basis of $40,000.00 a mile, $40,000 to $43,000.00 a mile which would already imply an apportionment?

A. Yes sir.

Q. Is it true, Mr. Weston that you remember the fact that it was about $40,000.00 to $43,000.00 a mile better than you remember the other figures?

A. Yes, sir. I remember the result. I can't remember what valuation we put upon the stocks.

403 Q. Now, Mr. Weston, you, as a Board, did not consider the tangible properties outside of the State of Nebraska?

A. We did not place any valuation on the tangible property outside of the state.

Q. The proportion which you, by your calculation, have assigned to this state would be about $104,000,000.00 on that basis alone?

A. I have not made the figures. I presume that is correct though.

Q. Now the next thing you took the aggregate value of the tangible property in Nebraska and deducted it from the $104,000,000.00, if the figures are correct, to get the value of the intangible property?

A. That would be the theory, yes sir.

Q. And is that the way you got that?

A. Yes sir.

Q. Is there any other way that you could, as a matter of mathematics, having found the value of the total bonds and stocks of the Company and divided it by the total mileage, could you by any other system than by multiplying the total mileage in Nebraska and deducting the aggregate value of its tangible property, get at the value of the franchise of the Company?

A. You mean on the stock and bond basis?
Q. Yes sir.
A. I know of no other method.

At this point an adjournment was taken until 2 o'clock p. m., at which time the examination in chief of the witness was resumed by Mr. Charles J. Greene, as follows:

404 Q. You mention in your testimony the value by the test of the earnings of the road. I ask you if you had before you the gross earnings of the entire system?
A. I don't know whether we had before us the gross earnings of the entire system or not.
Q. You had the 49th annual report of the Company?
A. Yes, sir, possibly we did, but I can't remember now what documents were before us.
Q. Now in what way do you estimate the value of a property by the earnings of that property?
A. My recollection is that the net earnings of the lines in Nebraska were reported to us by the Company amounting to something like $2500.00 per mile. Probably I don't remember just the exact figures, but the records will show, and that amount of net earnings per mile was capitalized at various figures 4–5 and 6 per cent.
Q. Did you finally agree as to what the value of the road would be, measured by the net earnings in Nebraska?
A. On the basis of 6 per cent. which seemed to be the most approved basis, as far as we could ascertain, the value of the road would amount to something over $40,000.00 per mile.
Q. Did you have any means of getting at the earnings of the lines in Nebraska other than furnished by the officials of the Company?
A. No sir.
Q. And reports?
A. I believe not.
Q. Did you take the returns of the officers or agents of the Company as to what the net earnings were in the state of Nebraska?

A. We based our action upon the sworn returns made to
405 us by the Company.

Q. Do you recall, Mr. Weston, any showing or statement to the Board by the Company, as to its constructive mileage?
A. I don't recall positively, but I don't think there was any showing made to us.
Q. There was no allowance made by the Board for it?
A. I don't think it was taken into consideration at all, is my recollection.
Q. Then you took as the basis of your calculation the net earnings of $6,000,000 and odd dollars just as they were returned?
A. Just as they were returned to us by the Company.
Q. Your recollection is clear as to the constructive mileage so-called?
A. I am quite positive in my mind that we did not take that into consideration.
Q. Didn't make any deductions on that account?
A. No sir.

Q. The earnings of the railroad in Nebraska are a part of the entire earnings of the corporation, are they not?

A. I suppose so.

Q. You did not, nor the Board did not attempt to separate them except as they were separated and reported by the Company?

A. We had no means or data from which to make such a separation.

Q. Is the value of the property determined by the capitalization of the net earnings the same as the value ascertained by the stocks and bonds?

A. There wasn't a great deal of difference—that is of the net earnings capitalized at 6 per cent.

406 Q. Did you finally get together as to what the value of the property would be on the basis of net earnings—the capitalization of the net earnings and the stock and bond test equalized or averaged?

A. No sir; I do not think that we made any figures to that effect.

Q. Did you accept one and reject the other or *vice versa?*

A. No, sir, we did not.

Q. Then ultimately what did you do, Mr. Weston, as to the value of the intangible property. What method did you finally agree upon?

A. After those matters had all been gone over the members of the Board had different opinions in regard to the value and the final finding was an adjustment of those opinions.

Q. That was on the intangible?

A. Yes sir.

The ATTORNEY GENERAL: You mean the entire value?

The WITNESS: Yes sir.

The ATTORNEY GENERAL: Not the intangible values?

Note by the Examiner.—There was no answer to this last question of the Attorney General.

Q. As I understand you, Mr. Weston, the Board had come to a conclusion as to what the value of the tangible properties was, separately from all others?

A. Yes sir.

Q. And had marked a valuation opposite each item in each column of the form furnished?

A. Yes sir.

407 Q. Now after you had arrived at a conclusion as to the value of the property there, measured either by the earning test or the stock and bond test, what deductions did you make before equalizing?

A. Well, all the property that was locally assessed, of course, was deducted.

Q. Locally assessed in what state?

A. In this state.

Q. Did you make any deductions for property subject to local assessment and taxation outside of the state?

A. I think not. We had no figures before as to the values of that property.

Q. You had before you the mileage of the C. B. & Q. system?

A. Of the entire system, yes sir, I believe so.

Q. But you do not recall that you had the property and valuations subject to local assessment before you?

A. In other states—no sir, I think not. That is my recollection.

Q. How did you reach the value of the intangible property after——

A. After the aggregate value was ascertained by the stock and bond method, or the net earnings capitalization, the difference between that and the tangible property would be the value of the franchise.

Q. Is that the method the Board adopted?

A. Yes, sir, although no record was made specifically finding so much value for tangible property and so much for franchise.

Q. But it was understood that the difference between the value of the tangible property and the total value ascertained either by the stock and bond test, or the earning test, was the value of the franchise in Nebraska?

408 A. Certainly.

Q. I notice by the auditor's report that the total value per mile of the A & N was $50,000.00. Now do I understand that you deduct from that the total value of the tangible property of the A & N in order to get the franchise value?

A. That is taken from the report of the Auditor of State?

Q. Yes, that is taken from the Auditor of State.

Q. (Read to witness.) I notice by the Auditor's report that the total value per mile of the A & N was $50,000.00. Now do I understand that you deduct from that the total value of the tangible property of the A & N in order to get the franchise value?

A. Yes sir.

Q. And that is true of all the other corporate divisions named?

A. Yes, sir, it is given here in this table (Referring to Ex. A. in the Bill of Complaint.) Tangible property.

Q. It is not the Auditor's report altogether, there is some other figuring there. You had before you the 49th Annual Report of the Burlington Company?

A. I presume we did but I can't swear positively in regard to that. There were quite a number of documents before us.

Q. That shows the gross earnings from operation in 1902 and 1903 as $62,638,378.82. You had that if the report was in evidence.

Q. The operating expenses for the entire system were, according to this report $40,542,472.76?

A. Yes sir.

Q. Now these earnings, if you gave any consideration to these items, you considered them with reference to the entire system the entire mileage and all the property produced?

409 A. I presume we did, and my understanding is that we based our calculations upon the net earnings as returned to

us in this sworn statement that was made in compliance with the statute. That is what our finding was based upon.

Q. The net earnings of the Company?

A. Yes sir.

Q. The earnings of the entire Company whether it was earned in or out of the state wasn't it?

A. Yes, but the earnings in the state of Nebraska were separately reported to us, under the statute, and it was upon that report that our finding was based.

Q. You didn't undertake to separate them yourselves, or to figure what proportion of the total earnings or total expenses should be chargeable to the Nebraska lines?

A. We had no means from which we could make an estimate of that kind.

Q. Are you acquainted with the Chicago & Burlington lines generally in the west?

A. In this state?

Q. Well, in the west? Have you any knowledge or general information about that?

A. I think so, I have traveled over them quite a good deal.

Q. Are the lines east of the river, mile for mile, of greater value than the lines west of the river, in your judgment?

Respondents object to this as being irrelevant and immaterial and incompetent.

A. My judgment would be that they were of greater value, that they are of greater value.

Q. Was there any credit given, in your calculations, or
410 deductions, on account of large terminals in other states than Nebraska?

A. I think not. My understanding was that after ascertaining the value per mile simply the property locally assessed in this state was deducted from the valuation in this state.

Q. So far as the stock and bond test is concerned, you took the total value thereof and divided it by the total mileage?

A. Yes sir.

Q. And that would make one mile of road in Cook County of the same value as a mile of road in the Sand Hills of Nebraska (Referring to Cook County, Illinois)?

A. Yes sir, it made a unit of equal valuation per mile.

Q. And notwithstanding that fact that there was no calculation or estimate made by the Board for deductions on account of the greater values east of the river?

A. No sir, I think not.

Q. Do you know whether or not that was filed before the Board in 1904 (Handing the witness a paper)?

A. I can't say positively.

Q. What is your impression, Mr. Weston, is it familiar to you in any way.

A. No, sir, it is not. Still it may have been filed.

Q. As I understand it you made no deductions in your calcu-

lating the value of the stocks and bonds and earnings for any property whatever, no tangible property outside of the state of Nebraska?

A. Not to my knowledge.

Q. I call your attention to the grand total of $29,700,000.00 to see if that brings anything to your mind?

411 A. No sir, it does not.

Q. In apportioning the value of the intangible property among the corporate divisons, did you give each mile of each corporate division the same amount of credit?

A. I think so; yes.

Q. That, of course, would assume that each mile was of equal earning power with every other mile?

A. I do not mean by that answer to that question that that was the final finding of the board.

Q. I understand, but that was in calculating by these different tests, you did it in that way?

A. Yes sir.

Q. Now, when you came to make your final assessments, what was done by the board with these different factors which you have described, the values of the tangible property, the value of the property by the capitalization of earnings, and the value of the property by the stock and bond standard?

A. Each member of the board had his own opinion as to the value of the road, based upon all these factors; that is, the tangible property and the intangible property as ascertained by the methods indicated.

Q. Well, the difference in the board related rather to the theory or method by which it was done than to the specific result by any particular method?

A. Yes sir; the board in their final opinions were not very far apart, and the ultimate finding of the board was an adjustment of these different findings, as based upon all these factors that had been discussed.

Q. For instance, there might have been some member of
412 the board that thought the property ought to have been assessed by the stock and bond theory?

A. Yes sir.

Q. Without regard to tangible property?

A. Yes sir; I can't swear that any member of the board had settled down to a conviction that any one estimation should be used as a basis to the exclusion of all other factors.

Q. Taking, for instance, the value of the road ascertained by the stock and bond method, was there any division of sentiment or opinion among the members of the board as to the results of that test?

A. No sir; I don't remember that there was.

Q. Then is that true also as to the value of the Nebraska properties based upon the capitalization of the net earnings in the state?

A. Yes sir.

Q. There was a difference?

A. No; there was no difference, because that was a matter of figures.

Q. Exactly?
A. Yes.
Q. And they got at the result of what it would be, worked out in that way?
A. Yes sir.
Q. Then you also, as I understand it, got together as to the value of the tangible property?
A. Yes sir.
Q. In the way you have described?
A. Yes sir.

Q. Now, when you came really to make the final assess-
413 ment, how did you harmonize the conflicting opinions as to what method should be adopted, or did you do it?

A. The members of the board were not very far apart as to what the final figures would be, and they were finally agreed upon by some member of the board yielding a little, and some others yielding a little, adding in some instances, and deducting in others, until the final result was determined in that way.
Q. Then, in getting at the value of the intangible properties, you were not very far apart whether you measured it by the earning test, or by the value of the stock and bonds?
A. True.
Q. Of course, in determining the value of the intangible property by either or both of these tests, you left out of view the value of the tangible property?
A. Certainly. My testimony shows that the value was ascertained by stocks and bonds, as being between $40,000 and $43,000 per mile; the report of the company shows that the net earnings, my recollection is, were something over $2500 a mile; that, capitalized at 6 per cent. would produce something over $40,000.00 a mile, showing that the valuation as ascertained by the stock and bond method and by the net earning capitalization method were not far apart.
Q. So you finally did come to an agreement as to about what the value of the franchise should be per mile, by these tests?
A. Yes sir; that is as to the aggregate value of the road, the difference between that aggregate value and the tangible property being the franchise valuation.

414 Q. And then, having ascertained in this way the value of the intangible property, you deducted the total value of the tangible property, did you?

A. That would be simply a matter of form, anyway.
Q. So that in your valuation of the intangible property, it represented not only the value of the franchise, or its distributive part of the value of the total franchise, but also, of the tangible property outside the state, didn't it?
A. No; I don't so understand it.
Q. In other words, Mr. Weston, you having found the value of the tangible property in the state to be so many millions, you proceeded to get at the value of the intangible property?
A. Yes sir.
Q. And you took for your working basis first the stocks and bonds

value, which represented all the property of the company, did you not?

A. Yes sir.

Q. And that, divided by $8,000, would give the value in this state?

A. Yes sir.

Q. And multiplied by the number of miles would give the total value of the franchise as you found it?

A. Yes sir.

Q. Now, from the total value of the franchise in this state, the only deduction made was the tangible property value?

A. Yes sir.

Q. If the constructive mileage was presented to the board, it was not considered by the board, as you recollect?

A. That is my recollection.

415 Q. And would you recollect it if it had been?

A. I think I would have remembered it.

Q. Was this statement, Exhibit 1 (referring to the 49th Annual Report of the C B & Q Co.) not considered by the board?

A. I can't swear positively that it was.

Q. You have no recollection?

A. I have no recollection of it, no sir.

Q. You wouldn't say then that it was considered?

A. I wouldn't say that it was or was not.

Q. In connection with what method of valuing would it be considered, if at all?

A. Well, if considered at all, I presume it would be in the ascertainment of the value of the franchise.

Q. By the stock and bond method?

A. Yes sir.

Q. In considering by the stock and bond method, you simply took the value of the stocks and bonds and divided by the total mileage?

A. Yes sir.

Q. And that is all that was done, so far as you can testify?

(No answer.)

The complainants now offer in evidence Exhibit 13 as a part of the examination of this witness.

Mr. KELBY (to the Attorney General): Will you admit for the purposes of this record that this Exhibit 13 was filed with the state board?

The ATTORNEY GENERAL: Yes; we will admit that it was filed with the State Board.

Exhibit 13, as referred to is as follows:

(See next page.)

416 COMPLAINANT'S EXHIBIT No. 13, C. W. P.

Chicago, Burlington & Quincy Railroad.

Property—The Assessment of which is not Included in the Assessment of our Railroad Property.

Chicago and local points in Illinois	5,100,000.00
Elevators, etc., at East St. Louis, Ill	200,800.00
" Peoria, Ill	25,000.00
Sheep yards, Montgomery, Ill, 535 acres	280,000.00
Coal Lands, Montgomery & Macoupin Co. Ill. 1376 Acres	289,995.00
Burlington Park at Naperville, Ill	22,940.00
Farm Lands, Madison County, 289 acres	24,960.00
Gravel Pit at Sugar Grove, Ill., 90 acres	22,825.00
Local points in Iowa	170,000.00
At Dubuque, Iowa	45,000.00
Coal Lands, Monroe & Marion Counties, Iowa	470,000.00
Elevators, Council Bluffs, Iowa	47,000.00
Davenport, Iowa	35,000.00
Burlington Bridge, Iowa	150,000.00
Minneapolis, Minn	350,000.00
Locally in Wisconsin	175,000.00
Winona Bridge	201,000.00
Lincoln, Nebraska	42,000.00
St. Louis, Kansas City Land Co	1,192,000.00
Uion Depot Security Atchison, Hannibal, Kansas City, Keokuk, St. Joseph and St. Paul	266,050.00
Transfer railway stocks, Chicago, Peoria & Kansas City	837,700.00
Cost of C. B. & Q. Interest in the T. P. & W Ry Q. O. & K. C. Ry, T. & N. Ry, D. G. & S. L. Ry F. & T. Ry, J & C. Ry, S. F. Cutoff Ry, S. G. G. & P. Ry	5,186,685.00
417 Miscellaneous Bonds	631,700.00
Cost of Securities of controlled roads (See annual report page 22)	10,926,110.00
Cost of Viaduct in Cook County, Ill	500,000.00
Total	27,191,765.00
Nebraska.	
Omaha	188,500.00
Plattsmouth	126,475.00
Burnham	26,557.80
Lincoln	960.00
Havelock	180,337.00
McCook	25,000.00
Viaduct & Grades	646,198.38
All other property	149,814.00
	$1,343,842.18

Colorado.

Denver	265,323.00
Sterling	500.00
Lyons & Longmont	3,150.00
	$268,973.00

Iowa.

F. ½ Nebraska City Bridge	153,300.00
" Plattsmouth "	200,000.00
	$353,300.00

Montana.

Yellowstone, Carbon & Rosebud Co	62,275.23

So. Dakota.

Deadwood, etc	10,000.00

418 Missouri.

Estimated Full Value, (Assessed at $300,000.00)	500,000.00

Kansas.

Atchison, Troy, etc	1,000.00

Wyoming.

Crook Co	1,200.00
Laramie Co	7,100.00
Sheridan Co	2,155.00
	$10,455.00

Recapitulation.

On C. B. & Q. proper	$27,191,765.00
Nebraska	1,343,842.18
Colorado	268,973.00
Iowa	353,300.00
Montana	62,275.23
South Dakota	10,000.00
Missouri	500,000.00
Wyoming	10,455.00
Kansas	1,000.00
Grand Total	$29,741,610.41

Said Exhibit bears the following endorsement:

Copy of Statement filed with the State Board of Equalization of Nebraska, for the year 1904.
Examined at Lincoln, & Correct copy. 6–9–05.
R. D. POLLARD.

End of Complainant's Exhibit No. 13, C. W. P.

419 Cross-examination.

By Attorney General BROWN:

Q. The Board considered everything that was filed before it, didn't it, Mr. Weston?
A. I think so, yes.
Q. Then your testimony is that if this was filed before the board, the board gave it some consideration.
A. Why, I think so; yes sir.
Q. Mr. Weston, about how many weeks was your board in session that year?
A. We were in session in the neighborhood of six weeks, most of the time from the first Monday in May until beyond the middle of June.
Q. During that time, you were giving consideration to the reports of the Company and investigating the value of this railroad property in Nebraska?
A. Yes sir.
Q. Was your board in session from day to day?
A. Most of the time; there would occasionally be an intermission of a day.
Q. What efforts and endeavors did you, together with the other members of the board, make to ascertain the values of these properties?
A. You are speaking of the Burlington property?
Q. Yes.
A. Called in the railroad people before the board to be heard, and a number of times, called them before us and interrogated them under oath.
Q. During all those times, were you exercising your judgment with reference to the subject under investigation?
420 A. I can answer for myself individually that I was.
Q. Were you at any time influenced in any respect by public clamor or agitation or the public press?
A. I don't think I was.
Q. You were endeavoring simply to ascertain the fair value of the railroad property for that year in this state?
A. Yes sir.
Q. Were you?
A. Yes sir.
Q. Did you intend at any time to assess the property of this company located in any other state?
A. Did you intend to do that?

Q. Did you as a member of the board?

A. No sir; I did not.

Q. Did you, in your judgment, assess any of their property that was located outside of this state that year?

The complainant objects to this as being incompetent and irrelevant and immaterial, for the witness to state what in his judgment he did, rather than the processes which he employed.

A. No sir.

Q. This was the first year under the operation of what is known as the new revenue law, wasn't it?

A. Yes sir.

Q. Was the assessment that you finally—or that the Board with your consent and participation finally made determined by what the prior assessments of the railroads had been in prior years?

A. No sir; not at all.

421 Q. Now, then, when you proposed this resolution of inquiry, first as to the value of the tangible property of this company, that was simply as a preliminary step, was it not, in the course of your investigation of that subject?

A. Yes sir; it is so recited in the resolution.

Q. It was not a purpose of yours in introducing that resolution to first ascertain, as a final fact the value of the tangible property and afterwards to ascertain as a final fact the value of the intangible property and add the two together was it?

A. No sir, I think not. My view in the matter, in introducing the resolution was simply that we could go into all the elements of property thoroughly; that was my view of the matter.

Q. That was what you were trying to do?

A. Yes sir.

Q. And these conclusions that you reached, which you and the board agreed upon as a tentative estimate of the value of the tangible property was simply the first step in that investigation, wasn't it?

A. Yes sir.

Q. And it is your judgment and was your judgment at the time that the tangible property of this company in this state was the figures, the total, that are on that tabulated statement?

A. Yes sir.

Q. It was contended by the railroad company, was it not, that they should be assessed alone on their tangible property?

A. No; I can't swear that the railroads made that contention.

422 Q. Well, they were objecting to having you include any franchise value at all, were they not?

A. My recollection is that the railroads never made any representation to us that their value should be limited by the tangible property.

Q. Did they ever make any representations to you or give you any figures, as to the value of their intangible property?

A. No sir; they did not.

Q. The only figures they gave you related to their tangible property?

A. Yes sir; a portion of the tangible property.

Q. Now then, when you had determined or estimated for the time being the value of the tangible property, then you, with the board, proceeded to find the value of their property in Nebraska by using the stock and bond test?

A. Yes sir; we were on that day in and day out for two or three weeks.

Q. You did not proceed to ascertain the stock and bond value of the road in Nebraska for the sole purpose of ascertaining the value of the franchise did you, but rather for the purpose of ascertaining the value of the property?

A. The actual value of the property.

Q. And when you speak of finding the franchise value by subtracting from the stock and bond value the value of the tangible property you simply state that as one of the methods used to find that intangible value?

A. Yes sir.

Q. You do not pretend to say that the board made any figures at all as to what the intangible property would be, do you, the franchise value.

A. No sir; we made no figures; made no record of any such figures.

423 Q. Now, then, in figuring the stock and bond value of the road, I understood you to say you did not remember what value you put on the capital stock of the Company?

A. No sir.

Q. All you remember is that the result of your judgment was that it was worth about $43,000.00 a mile?

A. Forty to forty-three, yes sir; I know we had a good deal of controversy as to the value of the stock, and what figure we ultimately fixed upon has escaped my mind; I don't remember that.

Q. You knew, did you, at that time, that the complainant's stock was convertible into bonds secured by the Great Northern and Northern Pacific, two dollars for one?

A. We knew, of course—we were cognizant—had become cognizant, through the press, that something of that kind had happened a year or two before that.

Q. And you also knew didn't you, that it was a matter of common knowledge that these bonds that were exchanged for stock, two dollars in bonds for one dollar in stock, were paying 4 per cent, didn't you?

A. I can't say that I had that precise knowledge.

Q. Well, wasn't that public knowledge; wasn't that information you had in your discussions there?

A. I can't swear positively that it was, in regard to the amount the bonds were paying.

Q. Didn't the report of the company to you show that all bonds outstanding were—all these guaranteed bonds—were paying 4 per cent.

A. Possibly that is true. The report will show that, if it is true.

424 The ATTORNEY GENERAL (to counsel for complainant): Won't you admit that fact.

Mr. KELBY: That is a matter between the Northern Pacific and the Great Northern, who alone guaranteed these bonds. The Burlington road had nothing to do with that.

Q. Well, Mr. Weston, there were no stocks of this Company on the market that year that you knew of, were there?

A. Not that we could ascertain.

Q. The Company advised you that it had no market value that they knew of?

A. Yes sir.

Q. That left you, under the law, obliged to ascertain as best you could what the actual value of that stock was?

A. Yes sir.

Q. Now that you did?

A. Yes sir.

Q. Didn't you?

A. Yes sir.

Q. When you estimated the value of the property in Nebraska by the stock and bond test?

A. Yes sir.

Q. Now, then when you came to use the net earning test, you used alone the net earnings as returned to you by the company?

A. Yes sir.

Q. In this state?

A. Yes sir.

Q. Not in any other state?

A. Not in any other state.

Q. And capitalized at 6 per cent. would make an average mileage value in the state of something over $40,000?

425 A. That is my recollection.

Q. Capitalized at 5 per cent. it would be about what in round numbers?

The complainant objects to this as being immaterial.

A. Capitalized at 5 per cent. on the basis of $2500.00 per mile—that is about what the report shows—it would be $50,000 per mile.

Q. In your judgment, at that time, you thought a 6 per cent. capitalization was a fair basis?

A. Yes sir. That was the capitalization that had been adopted by some of the courts, and we were guided by that.

Q. Then, if we accept the stock and bond test, or the net earning test, the value of this company's property in Nebraska that year was over $40,000.00 per mile?

A. Yes sir; the way the board figured it out.

Q. As a matter of fact, the road was assessed for several thousand dollars a mile less than that finally?

A. Yes sir.

Q. Now when it came to the distribution of the value that the board finally fixed on this property over its mileage in Nebraska,

was there anything said or done by the board towards distributing a franchise value over any of that mileage?

A. No sir.

Q. You were simply distributing as in your judgment you thought was right, the value that you had determined of the whole property in this state?

A. Yes sir; the board did that.

Q. And you distributed it to these constituent companies,
426 with the consent, didn't you of the railroad company?

A. My recollection is that it was the opinion of the company, or the representative of the Company that there should be a distribution as between so-called main line of franchise; that is, that the system should not be assessed as a unit with equal valuation per mile throughout the entire system. I think that was the attitude of the companies.

Q. Now, then, to sum up: As I understand your testimony, you first made an estimate of the value of the tangible property of the company in Nebraska?

A. Yes sir.

Q. Then you made an estimate of the value of the property in Nebraska, applying the stock and bond test?

A. Yes sir.

Q. Then you made an estimate of the value of the property in this state, applying the net earning test?

A. Yes sir.

Q. Then the board considered those several estimates, and in their judgment finally fixed the value of the railroad company at the value recited in the records of the board?

A. Yes sir.

Q. Is that true?

A. Yes sir.

Q. Now, Mr. Weston, you remember the meeting of the state board of equalization and assessment beginning July 18th of 1904, as an equalization board?

A. I remember of the meeting of the board, but I don't remember that that was the date. I remember the first meeting of the board, however.

427 Q. How long was the board in session as an equalization board, if you remember.

The complainant objects to this as incompetent, irrelevant and immaterial.

A. The better part of two weeks, my recollection is. The record will show; I have forgotten just how long it was.

Q. During that time, did the board have under consideration the valuation of several counties, of other property than that of railroads?

The complainants object to this as being incompetent, irrelevant and immaterial.

A. Yes sir.

Q. Were there complaints heard before the board as to undervaluation in certain counties?

The complainant objects to this as being incompetent, irrelevant and immaterial, and not proper cross examination.

A. Yes sir.

Redirect examination.

By Mr. CHAS. J. GREENE:

Q. Now, again, to go back to the stock and bond proposition, you are very clear that by the method used by the board, you found that the value of the lines in Nebraska was forty to forty-three thousand dollars a mile?

A. Yes sir; I am quite clear about that?

A. Now, that was the quotient of a division in which the total mileage, 8,112 was the divisor, wasn't it?

A. Yes sir, because the stocks and bonds covered that entire mileage.

Q. To get at, then, the dividend, you would multiply the
428 divisor by the quotient; that would give you the total value of the entire property, would it not?

A. Yes sir; multiplying the quotient by the divisor gives you the dividend, of course.

Q. I want to get at, if I can, what was the valuation put upon the stocks by the board; they must have agreed upon what the value would be; of what they at least would consider to be the value of the stock at that time?

A. As I have said in my testimony, I don't remember what that valuation was, but it can be readily ascertained. If the par value of the bonds is deducted from that total valuation of $340,000,000.00, or whatever it may be, the difference, divided by the mileage, will give the value that was placed upon the stocks.

Q. Now whatever may have been the reason, or the purpose of the board in making that calculation, that was practically what was done?

A. Yes sir.

Q. You were asked if consideration was given to certain elements and factors. What do you understand by the word consideration in this connection? It is rather an indefinite term, and I would like to know what you mean—understand?

A. I don't know as I could express it without using the same word—these various factors were considered with reference to their influence upon the value of the road.

Q. But isn't it true, that in a matter of mathematics, while you may consider various elements, yet when you get down to the actual figure, that is the only thing that is used, to bring about the result, when you get down to the actual figure?

429 A. Well, I think it is a matter of judgment to some extent, as well as of figures.

Q. For instance, if you were going to take the value of the bonds,

and add to that the value of the stock, and divide it by the total mileage, would that not be all the consideration that was given to the property that entered into these figures?

A. That would be a matter of figures, but when you can't ascertain the value of the stocks from the market, it is a matter of judgment as to what they should be estimated at.

Q. Then, this element which you consider would be with reference to fixing the value of the stock or the value of the bonds?

A. Certainly.

Q. Whatever you considered, you did reach the point where you determined what the value of the stock was?

A. Yes sir.

Q. And you did also reach the point where you determined what the value of the bonds was?

A. Yes sir.

Q. You knew also what the mileage was?

A. Yes; sir; as returned by the company.

Q. And $43,000 a mile was a result of the division or the calculation?

A. Something like that, yes sir.

Q. And to be certain now, in regard to this: the value of the stock found by the board was the amount left after deducting the value of the bonds from the total value of the property, which, in turn, you say, was found by multiplying forty or forty-three
430 thousand dollars by the total mileage?

A. Yes, sir, if the bonds were taken at par, and my recollection is they were, that result would necessarily follow.

Q. And that is the way it worked?

A. Yes sir.

Q. In that calculation, if you paid any regard to the property not subject to local assessment here or elsewhere, it would only be for the purpose of determining the value of the bonds?

A. Yes sir.

Q. Or the value of the stock?

A. Yes sir.

Q. You did not consider it as a specific deduction after you had determined the value of the stocks and bonds?

A. Well, I am confused in regard to what you mean.

Q. I mean, you made no deduction of property subject to local assessment, either here in the state, or elsewhere, after you had determined what the value of the stocks and bonds was?

A. Oh, in the final result, of course, the locally assessed property was excluded.

Q. I mean the locally assessed property outside of the state.

A. The property locally assessed in the state was excluded.

Q. Was anything else?

A. No; not to my knowledge.

Q. I notice in the assessment of the tangible property, there was 25 per cent. added to the values as returned, as to bridges,
431 buildings and rolling stock; was that addition made generally and indiscriminately as to all that class of property?

A. That is to each item of property, each class of property that was raised?

Q. In other words, you added to each class of property in each corporate subdivision, 25 per cent.?

A. Wherever the raise was made, it was a uniform raise for that class of property in that corporate division.

Q. As to that class of property, the officers of the company had returned its valuation on the return?

A. Yes sir; I believe so.

Q. Was there any testimony taken to change in any way the results?

A. I don't think there was; not to my recollection, no sir.

Q. Did the board, as a board, or individually, go about and inspect or examine the buildings or the rolling stock of the bridges?

A. Not during the sessions of the board.

Q. Wasn't the addition a sort of an estimate agreed on by the board that they would add so much?

A. Depending on their general knowledge of the condition and values of property, yes.

Q. No member of the board pretended to have a knowledge, for instance, of the cost of the construction of any of the bridges returned?

A. Not expert knowledge, no sir.

Q. Or of the buildings?

A. No sir.

Q. Or of the rolling stock?

A. No sir.

432 Q. And no testimony was taken?

A. No sir.

Q. And the addition was made regardless of where the bridge was located, or upon what line, or the character of the bridge?

A. There was a general raise of so much, belonging to that class of property.

Q. Whether a new car, or an old car, or what it was, it was all general?

A. Yes sir.

Q. The raise?

A. Yes sir.

Recross examination.

By Attorney General BROWN:

Q. The raise of 25 per cent. represented your honest judgment as to what the stuff was worth, didn't it?

A. Yes, sir; the judgment of the board.

Q. You thought it ought to be raised that much, didn't you?

A. Yes sir; that is, the board did.

Q. In making these calculations by the several tests you have described to ascertain the value of the property in this state, were they made in pursuance of any agreement on the part of the members of the board to arbitrarily raise the railroad valuations in the state.

The complainants object to this as incompetent, immaterial and not proper cross examination.

A. Not to my knowledge.

Q. Was there ever any agreement between any members of the board, so far as you know, to over-assess or over-value railroad
433 properties of this company or any other in the state?

The complainant objects to this as incompetent, immaterial and not proper cross examination.

A. Not to my knowledge.

Q. Was the final assessment that you returned of this company's property in this state, and the property of the other railroads in this state based on the assumption that other property than railroad property would be increased 80 per cent., or any per cent., or was it based on your investigation of what the property was actually worth?

A. I think it was the purpose of the board to ascertain the exact value of the railroads, and assess them at that valuation, irrespective of the outcome as to the assessment of other property. The law required all property to be assessed at its actual value, and I think that was the purpose of the board in its finding.

Redirect examination.

By Mr. C. J. GREENE:

Q. There was quite an increase in the assessment of all property in the state, wasn't there, over the previous year?

A. Yes sir; something over $100,000,000.00.

Q. Now, in making that raise, what was the relative increase between the railway and other class of property?

Respondents object to this as being immaterial and as assuming that the witness knows it.

Question withdrawn.

Cross-examination (continued).

By Mr. JAS. E. KELBY:

Q. What in your judgment, from your knowledge and
434 experience and investigation, is the fact about the assessment of the Burlington Company? Was it too high or not, in your judgment?

The respondents object to this as being an attempt to have the witness impeach his own judgment, and as being immaterial, irrelevant and incompetent.

A. On the stock and bond basis, as we were able to ascertain the facts, and on the capitalization of net earnings at 6 per cent., which seemed to be the most approved estimation at that time, the road was apparently very liberally treated.

Q. You mean——

A. I mean that it was assessed really lower than the estimates on those bases would show the actual value to be.

Q. If, however, the so-called net earnings that were reported and which you took into consideration, as a member of this board, were fictitious or constructive, to the extent of $1,700,000.00, what would be your answer to the question last propounded.

The respondents object to this, for the reason that the witness had already testified that no facts were presented by the Company to the board touching any fictitious or constructive mileage, and for the further reason that it is immaterial, irrelevant and incompetent.

A. If the company made a fictitious return to the board of its earnings, I don't know that it would necessarily affect the result at all, because neither the net earnings nor the stock and bond basis were taken as the sole basis for estimating the value.

435 Q. If the Company, however, did, in fact, report to your board these fictitious or constructive earnings, and you considered them, what is your answer to that question?

A. I think the company should be held by the return it made under oath to the board.

Q. Didn't the company file a statement of a constructive or an arrangement between the lines east, and those in Nebraska by which the Nebraska lines were given more than a mileage pro rata of the earnings?

A. It is possible that such a statement was filed. I have no recollection of it at the present time.

Q. You never saw that statement?

A. I don't remember that I ever did.

Q. You don't know whether or not the company filed such a statement?

A. I couldn't say positively that they didn't.

Cross-examination (continued).

By Mr. C. J. GREENE:

Q. I want to ask you one question, Mr. Weston: In your answer that on the stock and bond proposition the company was liberally treated, that is on the hypothesis that a mile of railroad in Nebraska is of equal value as a mile of railroad in any and all other states?

A. Oh, yes sir; I suppose that is the basis upon which an estimation was made.

Q. And based upon the proposition that a mile up on the sand hills is worth as much as a mile in Cook County, Illinois, and Chicago?

436 A. Yes sir. Because the stock and bonds, as I say, cover the entire system, and the only way you could ascertain the value was by an equal division.

Q. On the assumption that one mile was as good as another, then you would say it was liberally treated?

A. Yes sir.

Witness excused.

437 Mr. CHARLES WESTON, having been heretofore sworn and examined as a witness in behalf of the complainant, is here called as a witness in behalf of the respondents. Being examined in chief by the Attorney General, he testified as follows:

Q. Mr. Weston, you recall the meeting of the State Board of Equalization and Assessment in July, 1904, when it was acting as a board of equalization?

A. Yes sir.

Q. At that time were complaints made as to the valuation of property other than railroad property in the several counties?

A. Yes sir.

Q. Were those complaints heard and determined by your board?

A. They were.

Q. What was the result of the board's consideration of that matter?

A. We raised some 23 or four counties in the state out of the 90 counties, and lowered none; that is my recollection.

Q. Now, you raised the valuations returned to you in these 24 counties so as to make the valuations represent the full value of that property?

A. That was the intention of the board.

Q. And was it the judgment of your board that the other counties not in the 24 had already been assessed substantially to the full value?

A. Yes sir; as near as we could ascertain.

Cross-examination waived.

Witness excused.

438 At this time an adjournment was taken until July 28th, 1905, at 9.30 o'clock a. m.

OMAHA, NEBRASKA, *July* 28, 1905—9.30 a. m.

Proceedings were as follows:

It is agreed by counsel for parties hereto that the several county assessors of the state would each, if present and sworn, testify that the assessment made by him in the year 1904, of the properties within his jurisdiction was made by him and his deputies without any agreement or understanding between them, or between him and the other assessors of the state to undervalue such property; and that the assessment of such properties by him and his deputies was fixed at what he believed to be the full value thereof, and that no property was intentionally omitted from the tax list. It is further agreed that upon the trial of the case, the Court shall consider the facts herein stated the same as if the assessors aforesaid had stated them under oath as witnesses.

It is also agreed that if the testimony of any of the assessors shall be produced in the case, then this stipulation shall not be applied to them.

It is hereby agreed, by and between the parties hereto that if George W. Marsh were present, he would testify that in 1904 he was Secretary of State of the State of Nebraska and also a member of the State Board of Equalization and Assessment for that year; that he participated in the assessment proceedings before the Board, and was

and is, familiar therewith, and that the testimony of Charles Weston taken in this cause on July 27th, 1905, before Charles W.
439–462 Pearsall, Examiner, shall be read and considered by the Court as the testimony of said George W. Marsh herein the same as if he had deposed thereto under oath.

At this time an adjournment was taken to a time to be agreed upon between the parties at a later date.

* * * * * * *

463 Thereupon afterwards, to-wit: On the 27th day of De-ember, 1905, Volume Three of Testimony taken on behalf of Complainant and Respondents, was filed in said case, which said Volume Three is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Defendants.

Testimony taken on behalf of the complainant, Chicago, Burlington & Quincy Railway Company; also testimony taken on behalf of respondents, F. C. Babcock, as Treasurer of Adams County, Nebraska, *et al.*, under the sixty-seventh rule of the Supreme Court, as amended pursuant to agreement between the parties hereto, beginning October 5, 1905, at 2 o'clock p. m. at room No. 711, New York Life Building, in the city of Omaha, Douglas County, Nebraska, before me, Charles W. Pearsall, an Examiner in Chancery of the United States Circuit Court for the District of Nebraska.

Present: Charles J. Greene, Esq., Solicitor for Complainant. Hon. Norris Brown, Attorney General, Hon. W. W. Slabaugh, County Attorney, Douglas County, Nebraska, Solicitors for Respondents.

464 It is hereby stipulated and agreed that the testimony may be taken in shorthand by Charles W. Pearsall, the Examiner before whom this testimony is being taken, and by him extended thereafter into longhand.

465 PETER MORTENSEN, a witness on behalf of respondents is here called and duly sworn. Being examined in chief by Attorney General Norris Brown, he testified as follows:

Q. What is your name?
A. Peter Mortensen.
Q. What official position do you hold at the present time?
A. That of State Treasurer.
Q. How long have you been State Treasurer.
A. Since January 1903, I believe.

Q. Did you participate, as a member of the State Board of Equalization and Assessment, in 1904?

A. Yes sir.

Q. Did you attend the meetings of the Board that year?

A. Yes sir.

Q. About how long were you in session as a Board in assessing the railroad properties that year?

A. I don't remember just how long that was. The Board was in session as a Board of Assessment and a Board of Equalization for about three months.

Q. Did the Board meet from day to day?

A. Yes sir. We took a recess from day to day.

Q. There was considerable agitation that year, with respect to the assessment of railroads in the newspapers, was there not?

A. The newspapers agitated it somewhat, yes sir.

Q. That was the first year the new law went into effect wasn't it?

A. Yes sir.

466 Q. You had been on the assessment Board the years previous to that hadn't you while you was state treasurer?

A. 1903 yes sir.

Q. 1902?

A. No sir.

Q. 1903 was your first assessment?

A. Yes sir.

Q. There was agitation that year the same way, was there not?

A. Not to such a large extent.

Q. In fixing the value of complainant's property, with other railroads in this state, what influence did this agitation have on you, if any?

A. It had the influence that it made us examine closer into the question and examine the proofs before us and probably study the case more thoroughly than we would otherwise.

Q. Did it stimulate you to put the value of the railroad higher than you thought it should be?

A. No sir.

Q. Were you influenced to assess the railroads high because you were a candidate for re-election that year?

A. No sir.

Q. Now Mr. Mortensen was there any agreement between you and the other members of the Board with respect to what the valuation of complainant's property should be, and that of other railroads in this state, prior to your examination into the facts?

A. Certainly not. Not prior to the finding of the assessment—the final finding.

467 Q. What did you consider in fixing the value of complainant's property that year?

A. We took into consideration the tangible property which consisted, of course, of the roads and equipments and other property. We also took into consideration the stock and bond values and the net earnings.

Q. The complainant company made return to your board of all its property that year?

A. Yes sir.

Q. Schedules of its rolling stock and all its physical property in the state?

A. Yes sir.

Q. Did it make a return of its stock and bond issues?

A. Yes sir.

Q. Did it make a return of the earnings of the company, gross and net, in the state?

A. Yes sir.

Q. Did it file with your board the annual report for the year previous, of the company?

A. Yes sir.

Q. What of the items that we have just enumerated, did the board consider in fixing the value of the property, all of them?

A. All of them, yes sir.

Q. In addition to that information did you examine any other documents such as Poor's Manual?

A. Oh yes, and such other information as we could get, Poor's Manual, and Clews Investment Guide—I think that is the name of it—Investment Guide, and also the Report of the Interstate Commerce Commission, and different documents as we could get,
468 bearing on the earnings and value of the road and so forth.

Q. Do you remember whether or not you examined the reports of the commercial agencies, such as R. G. Dunn and Bradstreet?

A. No sir I do not.

Q. You don't remember that?

A. No we did not have them before us.

Q. In addition to those things you have enumerated did you also receive the testimony of representatives of the roads on matters in addition to, and explanatory of, matters contained in the report?

A. We sometimes had a representative of the road before us to explain matters that we did not understand.

Q. Were they under oath before you?

A. I think they were there most of the time.

Q. There was no record made as to what they testified to?

A. I couldn't say as to that—no, I think not.

Q. In finally reaching your conclusion would you say that your conclusion was based on all the information that you have just enumerated in this examination, or not?

A. Certainly it was, yes sir.

Q. Now Mr. Mortensen what was the first thing you did when you began investigating the values of railroad property that year?

A. The first thing was to examine the tangible—ascertain the value of the tangible property under the resolution offered by Auditor Weston.

Q. You remember that resolution do you?

A. Yes sir.

Q. Was it the purpose of that resolution to ascertain as a
469 final conclusion the value of the tangible property and have it assessed at that value?

Mr. GREENE: The complainant objects to this as being incompetent and irrelevant. It is not competent for the witness to state the purpose for which the resolution was written.

A. I understood it as such when it was first introduced, and for that reason offered another resolution to include all the property, tangible and intangible, but being assured by Mr. Weston and other members that the intention was only to comply with the statute I consented, and participated in the deliberation under that resolution.

Q. Then if I understand you correctly you first investigated the value of the physical property as returned in the schedules of the complainant company that year, did you not?

A. Yes sir.

Q. Was it understood at the time you was making that examination that that was simply to be one of the factors of the value of the property?

A. That was the way it was explained to me after the resolution had been introduced and argued.

Q. Now then the Board ended that investigation of the value of the physical property by reaching—or agreeing on the conclusion amongst yourselves as to what the physical property should be estimated at, in accordance with the resolution of Mr. Weston?

A. Yes sir.

Q. Now after that what did you do Mr. Mortensen, the
470 Board?

A. We took into consideration the stock and bond values.

Q. Of the company?

A. Of the company, yes sir.

Q. Did the company return its total issue of stocks and bonds to the Board?

A. Yes sir.

Q. You accepted those as true, did you?

A. Yes sir we certainly did, with such other information as we had before us.

Q. Well when you came to fix the value of the stocks and bonds you used your own judgment as to the value did you not?

The complainant objects to this as being leading.

A. We used our own judgment according to the information we were able to obtain from the market value of such stocks and bonds.

Q. What did the company itself say as to the value of the stocks and bonds, if you remember as to the stocks?

A. The company claimed to be ignorant of the value of the stocks and bonds—especially of the stock, not of the bonds.

Q. But of the stock?

A. Of the stock, yes sir.

Q. Do you remember at this time what value the board put on the stocks?

A. We had all kinds of estimates of value, all along from seventy odd cents up to $2.00.

Q. You mean $1.70?

A. Yes $170.00 up to $200.00 on each share.

Q. On each share?

471 A. Yes sir.

Q. Do you remember what the conclusion of the Board was as to the value of the railroad per mile in this state, applying the stock and bond test?

A. Of course that was based simply on our information as to the value of the stocks. It would vary all along from 43 to a little over 46 thousand dollars a mile, according to the value that was placed on the stock.

Q. Did you rely on the information contained in the report marked Exhibit 1, being the 49th Annual report of the Board of Directors of the Chicago, Burlington and Quincy Railway Company to the stockholders, in considering the stock and bond value of the road?

A. Yes sir we examined that and compared it with their own statement and found it comparatively, if not exactly correct. I think it was just the same thing as contained in the report to the Board.

Q. And under that test the value of the road, did I understand you to say, was in this state, all the way from 40 to 43 and 46 thousand dollars a mile?

A. Yes say $45,000.00.

Q. Depending on the value that you gave the stocks and bonds?

A. Yes sir.

Q. Did the Board accept that as the value of the road?

A. No sir.

Q. Then what did you do?

Q. Well we took into consideration other matters. We compared the value of the roads in this state with the value of the road

472 in other states, as near as we were able to ascertain, with the road in Wyoming and Montana and South Dakota and Minnesota—they have a few miles there I guess—and in Iowa, Illinois, Missouri, Wisconsin, Kansas and Colorado.

Q. Did you consider Exhibit 7, the return made by the company of the earnings gross and net, in the state of Nebraska.

A. Yes sir.

Q. Do you remember approximately about how much the net earnings of the complainant company, the Burlington, were in the state of Nebraska?

A. No I do not.

Q. Well approximately?

A. Somewhere about $2400 or $2500 a mile.

Q. In estimating the value of the road by this test how did you do it?

A. Well we computed it by several tests—with several rates of interest, 4, 5 and 6 per cent. The 6 per cent. rate came out about equal

with the value by the stock and bond test, there wasn't very much difference.

Q. You mean you capitalized the net earnings per mile at six per cent.?

A. Yes sir.

Q. And it brought approximately the same result as the stock and bond test?

A. Yes sir.

Q. Now these tests Mr. Mortensen, the stock and bond test and the net earnings test—did you accept either one as the value of the road?

473 A. No sir we did not.

Q. What did you do with respect to them?

A. Well as I say we sat together as a Board and we had different ideas, but we finally agreed on a value for the road.

Q. Considering those tests as only——

Mr. GREENE (To the Attorney General): You add a great deal. I would rather the witness should testify than you, if it don't make any difference to the State.

The ATTORNEY GENERAL: All right, but I think we would both tell the truth.

Mr. GREENE: Well he is supposed to be testifying, while you may be just theorizing.

The WITNESS: I am just stating the facts.

Q. Well what was the understanding of the Board among themselves with reference to whether or not your final judgment should reflect the value of the road by any of those tests?

A. There was no agreement of understanding to that effect.

Q. Was it or was it not understood that you would consider all those several tests?

A. Certainly.

Q. It was so understood?

A. Yes sir, it was so understood and it was done that way.

Q. Did you or the Board, as far as you know, assess the complainants' property, or the railroads of the state, that year, on the assumption that other property would be assessed and the grand assessment roll would reach $400,000,000.00?

474 A. We assessed it on the theory that it would be assessed at its fair value, not on any other proposition, that is in regard to what the grand assessment would be. That had nothing to do with the assessment of the railroads.

Q. You fixed the value of the railroad property you say independent of what the other property might be?

A. Why we certainly did. It was assessed before we know anything of the value of the other property in the state.

Q. Now Mr. Mortensen you remember of the meeting of your board when you acted as a Board of equalization of values, of the assessed values of other property in the state?

A. Yes sir.

Q. That meeting was subsequent to your meeting at which you fixed the assessment of the railroads?

A. Yes sir.

Q. Were complaints made to your Board of Equalization alleging under valuation of other property than the railroads?

A. Yes sir.

Q. Do you remember whether or not the complainant made a complaint of that kind?

A. I think it was one of the complainants.

Q. What did your Board do with those complaints?

A. We considered them.

Q. Did you take testimony?

A. Yes sir.

Q. From where, from out in the——

A. Yes and we had a report of the transfer of real estate in the different counties during the past—the previous year.

Q. Made by whom?

475 A. Made by Land Commissioner Follmer.

Q. Was he a member of the Board of Assessment?

A. He was a member of the Board, yes sir.

Q. After considering these complaints what did the Board do?

A. Why we raised some twenty odd counties from 5 to 20 per cent., I think.

Q. Did you lower the valuations in any counties?

A. Not any, no sir.

Q. Why did you raise them in these 24 counties?

A. Because in our judgment they were too low.

Q. Assessed below their value?

A. Assessed below their value, yes sir.

Q. After you had raised them from 5 to 20 per cent., whatever it was, did the assessed valuation then in your judgment represent or not the real, actual value of the property?

A. In our judgment, it did, yes sir.

Q. And in the other counties in which you did not raise the values, what was the judgment of the Board as to whether or not it had been assessed at its full value or not?

A. It was the judgment of the Board that those counties had been assessed at a fair value.

Cross-examination.

By Mr. Charles J. Greene:

Q. Mr. Mortensen you use the word "consideration" all through your testimony. Do you mean that you took up the different items that make up the value of the property and inquired about them and considered them as a preliminary step to your final determination?

476 A. Yes sir.

Q. Now you took the tangible properties and the Board practically agreed upon what the tangible properties were worth?

A. Yes sir that is right.

Q. You of course valued them as a railroad?
A. Certainly.
Q. The tangible properties as they are for railroad uses?
A. Yes sir.
Q. Then what was there left to value, in the judgment of the Board, after you had valued the tangible properties in that way?
A. The intangible property.
Q. Under the constitution?
A. Yes sir.
Q. Now when you came to value the intangible properties you gave, in your preliminary work, you gave consideration to the stocks and bonds of the corporation?
A. Yes sir.
Q. Of the Chicago, Burlington & Quincy, the parent company?
A. Yes sir.
Q. The stocks and bonds consist of the entire capital stock of that company, and its bonds?
A. Yes sir.
Q. And after a considerable discussion did you reach a conclusion as to what you estimated or thought the stocks and bonds as a whole were worth? Or was there a disagreement there amongst you?
A. There might possibly have been a disagreement in regard to that.
477 Q. You then did not reach any definite conclusion based upon the stocks and bonds?
A. No sir.
Q. Or upon the stock and bond proposition?
A. No sir.
Q. As to the value of the road?
A. No sir.
Q. You made some tentative figures did you not?
A. Several of them, yes sir.
Q. On the stock and bond proposition?
A. Yes sir.
Q. Now in those calculations did you—what was your divisor after using the value—the estimated value of the stocks and bonds as the dividend, did you use the entire mileage of the system as the divisor?
A. We used the entire mileage of the system, yes sir.
Q. And that calculation produced a certain result per mile?
A. Yes sir.
Q. Which you think ran from 43 to 46 thousand dollars a mile?
A. Yes sir somewhere about that.
Q. But you did not adopt that you say as final?
A. No, for the reason that the property in other states might be more valuable than it was in this state.
Q. But I am asking you as a matter of fact did you finally adopt it upon that basis, as a valution of the property?
A. We might have adopted it as a guide but we did not certainly assess it at any forty-three or forty-six thousand dollars, else we couldn't have——

Q. Well did you do more than this on them. You took
478 the total value of the stocks and bonds as you found it and divided it by the total mileage of the system and the result gives so much per mile?

A. Yes sir.

Q. That is as far as you went? Did you go any further and resolve that that should be the value per mile?

A. No sir.

Q. Did not?

A. No sir.

Q. Stopped right there?

A. We stopped right there. That was figures that was adopted for the consideration of the Board.

Q. Now Mr. Mortensen when you had calculated on that basis you took up the earning proposition?

A. Yes sir.

Q. The earnings of the road?

A. Yes sir.

Q. Now did you have before you the total earnings of the system?

A. I think we did, and also the total earnings of the roads in Nebraska.

Q. You recognized in that method that the earnings of the Company embraced all of its earnings over its entire system and properties?

A. That is the total earnings, yes sir.

Q. But of course the earnings you were after were the earnings in Nebraska for that year?

A. For our consideration, yes sir.

Q. And by what method did you separate or estimate the earnings of Nebraska from the earnings of the balance of the system?

479 A. It is all separated by your own report.

Q. The report, or rather the evidence, was all before you was it not, all of those reports and statements and showings?

A. Yes sir.

Q. The evidence?

A. Yes sir.

Q. Before you finally acted?

A. Yes sir.

Q. When you finally acted you acted with reference to all the evidence that had been adduced one way and another?

A. Yes sir.

Q. Now in the course of the investigation you learned did you not that the report of the earnings in Nebraska included what has been called a fictitious mileage?

A. Yes we took that into consideration and we also took into consideration what is known as the Missouri River rate. We realized that you charged more per ton per mile west of the Missouri River than you did east of the Missouri River.

Q. Then also you had before you that in their manner of bookkeeping the company had credited the state with more earnings than the road actually earned in the state?

A. Well that was a matter of account.

Q. That was presented by Mr. Pollard as a part of the showing was it not?

A. There were some facts and figures presented.

Q. Did your Board calculate what the difference was, or how much it amounted to?

A. Why the difference was already presented to us, and the figures given to us by the Company. Of course whether they were
480 correct or not, whether that was the actual earning or whether it was more or less we were not able to decide.

Q. Well that was so in regard to a great many things that were before you?

A. Yes sir that is so.

Q. Of course you were there to get at the facts from all the circumstances before you?

A. Yes sir.

Q. Therefore not knowing personally just what the amount of earnings was you rejected the item called fictitious earnings?

A. No sir we took that into consideration.

Q. I mean you did not credit the company with them?

A. We certainly did.

Q. What?

A. We took them, certainly we took them into consideration.

Q. What I want to know is did you take it into the final calculation?

A. I did.

Q. I mean did you calculate it mathematically?

A. Yes sir.

Q. Did you make the deduction from the total earnings?

A. I would not say that the road was assessed mathematically.

Q. No, but I mean supposing you found the earnings to be so many millions, did you deduct a certain per cent. on account of the fictitious credit given to the road, did you make any deduction of that kind?

A. We certainly did not suppose that the road gave the state credit for what it had not earned, or for more than it had earned.

481 Q. You argue the question with me and that is not a good way to answer a question when the attorney is being fair. I ask you now if you, in your final calculation, made any deduction on account of this fictitious earning which was shown by Mr. Pollard and others before you, or did you let it stand on the first return?

A. If we had made an assessment based on a capitalization of the exact earnings we certainly did, but it was not assessed up to the full capitalization.

Q. I understand, but in assessing the road on the earning basis, the report for instance showed an earning of how many millions?

A. We will take it per mile, if you please.

Q. The gross earnings were fifteen millions and the operating expenses were over eight millions, leaving a balance of over 7 millions, do you remember?

A. Yes that is right.

Q. And then there were taxes paid which reduces it to $6,771,000.00. Now if I understand it correctly the earnings included about $1,700,000.00 which was credited to the roads of this state by the Company, as a matter of bookkeeping, which was not earned in this state. Now did you deduct that $1,700.000?

A. I can't say we did. I do not think that we were informed of those facts that you did not keep your books as they ought to have been kept.

Q. Well I understood you to say, a few moments ago, that you were, that Mr. Pollard had told you this.

A. Well the fact that a differential——

Q. I prefer very much that you confine yourself to answering my questions.

482 A. Well if they are just direct questions, but I don't always understand them.

Q. Well that is all right Mr. Mortensen, I do not want to confuse you or embarrass you in any way of course. Now Mr. Mortensen you did not, even on the earning basis, after considering these different elements, make any final calculation to get the value of the road did you?

A. No sir.

Q. After you had made these tentative or preliminary calculations, upn the stock and bond basis and upon the earning basis, and then had made the estimate upon the tangible property, the Board finally found themselves in disagreement.

A. Why we found ourselves with all those figures before us, and it was natural that four or five men should have different ideas of the different propositions, but before the finding was made we were fully agreed as to the value of the road.

Q. Then you finally got down to some particular *some* that was satisfactory?

A. Yes sir to all of us.

Q. Was that sum or amount of the value of the road per mile or was it the value of the entire road in the state, or the value of the entire property of the company?

A. It was the value of the entire system in the state of Nebraska.

Q. Did you at any time agree upon the value of the entire property of the Company in and out of the state?

A. No, we had nothing to agree on for the reason that we were not assessing it.

Q. Did you agree finally upon what the earnings in the state were?

483 A. We agreed on them as per your report.

Q. Did you agree upon what the earnings of the entire system were, except as is in the report?

A. There could be no disagreement because we took the report for it of course.

Q. Did you agree upon the aggregate value of the physical properties in the state?

A. It never was put to a vote.

Q. Well didn't you do it about this way; that having considered

all these factors, you finally said that the road is worth, so far as we can ascertain, about so much a mile?

A. Yes sir.

Q. Fixed it that way?

A. Yes sir.

Q. Now what was the amount per mile that you agreed upon finally?

A. I think it was somewhere between $38,000.00 and $39,000.00.

Q. Did you apply that value to each mile of road in the state.

A. That was the average per mile of the system.

Q. That was the average mile?

A. Yes sir.

Q. You did not take a mile in each division of the system and say that is so much, and then get an average afterwards?

A. We made the distribution afterwards.

Q. Is this then correct, Mr. Mortensen, to sum it all up, that whatever this examination and investigation, the first actual agreement between the Board, among the Board, was the final one, the final determination that the average value of each mile in the state of Nebraska was $39,000.00 or $40,000.00? according to the figures you stated a minute ago?

484 A. That was the first vote taken.

Q. Now prior to the taking of this last and final vote you had discussed and considered all of these different elements in the manner you have described?

A. Yes sir, certainly.

Q. And without reaching any definite conclusion about any of them?

A. Yes sir.

Redirect examination.

By Attorney General BROWN:

Q. I understand you to say that you accepted the return made by the company as to its net earnings in the state of Nebraska, as true?

A. We took that into consideration.

Q. You accepted it as true?

A. We had no other information.

Q. Then you accepted it as true, did you not?

A. Why I presume so.

Recross-examination.

By Mr. GREENE:

Q. You accepted that as you accepted everything else before you, put there by the Company, in regard to their property, earnings and so forth?

A. In regard to their earnings and so forth.

Q. You generally do accept all statements unless they are contradictory statements or unless there is some evidence tending to impeach them, do you not. I mean that is the usual course?

A. Yes that is the usual course.
Q. It, at least, makes a *prima facie* case?
A. Certainly.

Witness excused.

485 Governor JOHN H. MICKEY, a witness on the part of the respondents, is here called and duly sworn. Being examined in chief by Attorney General Norris Brown, he testified as follows:

Q. State your name.
A. John H. Mickey.
Q. And your age?
A. Sixty years old.
Q. Where do you reside?
A. Lincoln, Nebraska.
Q. What official position do you hold at the present time?
A. That of Governor.
Q. How long have you been Governor?
A. Since January 1903.
Q. Did you participate in the meetings of, the Board of Equalization and Assessment of the State of Nebraska in the year 1904?
A. I did.
Q. Was that the first year of what is known as the new revenue law, since the new revenue law went into effect?
A. It was.
Q. Do you remember about how much time the Board spent in fixing the values of the railroads in the state that year for taxation purposes?
A. Well, I think we went into session the first Monday in May, and we were almost continuously in session, with a few days excepted, for about six weeks, in the assessment of railroads.

Q. What effort did the Board make to arrive at its con-
486 clusion, in a general way?

A. Well, we undertook to study very carefully the reports filed by the railroads, with other information that we could get, to inform ourselves of the value of the railroads, each separate by itself.
Q. What influence did the agitation in some of the newspapers have with you and the Board, so far as you know, in fixing that valuation?
A. Well, I am not cognizant that it had any effect whatever, on any member of the Board, or myself.
Q. Did you feel any bias or prejudice against the complainant, or any other railroad, that year in making your assessment?
A. None whatever.
Q. Were you influenced in reaching your valuation of the complainant's property, or that of any other railroad in the state, by the fact that you were a candidate for re-nomination?
A. I was not at all. Perhaps I might cite one instance——
Q. Well, I don't think it is necessary. Before making the investigation as to the value of the roads, and before considering the re-

turns made to the Board by the complainant company, did you or the Board agree among yourselves, to fix the aggregate value of the railroads in the state of $46,000,000 or any other sum?

A. No sir.

Q. Did you know what the aggregate value of the railroads would be until after you had fixed each one separately?

A. We did not.

Q. Did you value each railroad according to the evidence you had before you, and the returns made by the road itself, inde-

487 pendent of the value of other railroads and of other property?

A. Well, we used other information besides the returns of the railroad, in arriving at the value of each corporation.

Q. But the value of each corporation was determined independent of the value of any other railroad?

A. It was; yes sir.

Q. Did the Board ever assume that other property in the state than railroads would be assessed at any figure, and on that assumption base your valuation of complainant's property?

A. It did not.

Q. Did the Board ever assume that the grand assessment roll of the state would be four hundred million dollars, or any other sum, and on that assumption base the valuation of complainant's property?

A. It did not. The matter was discussed before the Board: that is, the duty of the Board in assessing railroad property, and it was thoroughly understood that it was our duty to go on and assess the railroad property.

Q. Now Governor, what information did you have before the Board with respect to the value of complainant's property?

A. Well, we had their sworn returns required under the statute. I think the Burlington road complied with the statute as near as they could, with exception perhaps of the value of the stocks, which to them, I think, was an unknown quantity, as far as the value was concerned.

Q. They so reported to you?

A. Mr. Pollard's testimony was to that effect, and I think some other testimony there.

488 Q. Now, in addition to the returns made by the Company, what other information did you have?

A. Well, we had two financial guides, giving the value of all classes of property, corporate property, railroad properties, and we had Poor's Manual and the Interstate Commerce Commission Reports, and perhaps some other information that I don't remember of just exactly.

Q. Did you consult the market reports?

A. Yes sir.

Q. As to the value of the stocks and bonds of complainant's property?

A. My recollection is that we made an average value of the stocks, taking the lowest and the highest at different times.

Q. In addition to the information you have already stated, did

you have the testimony of Mr. Pollard, the tax agent of complainant with respect to their property?

A. We had Mr. Pollard before us under oath, to my recollection, that is, that the value, the definite value, of the stock could not be given. Of course, we understood that they had been exchanged, a large part of them at least—the greater part of them—for other securities at 200—I mean 100 for 200.

Q. $100 in stock for $200 in bonds?

A. Yes, and some other securities.

Q. Did you know at that time, or did you not, that those bonds were worth par?

A. My recollection is the reports showed that, yes.

Q. Now, Governor, did the Board, or did it not, consider all these things that you have talked about in fixing the value of complainant's property?

489 A. Yes; they were all under consideration and carefully canvassed and studied.

Q. In addition to those, did you use your own information and knowledge—general knowledge of affairs and values, or not?

A. Well, the Board undertook to follow the statute in determining it; felt that the Board was required to use its judgment, after getting all the information it could as to its tangible value and stock and bond value, and its net earning value.

Q. Did the Board do that?

A. It did.

Q. What was the first thing the board did when it began this investigation of values of complainant's property?

A. Well, after several days' session, the Board finally adopted a resolution that they should take up, the first thing, the ascertaining of the value of each road, the tangible value, and go over that.

Q. Do you mean by that the value of the physical property as returned by the schedule of the Company?

A. Yes sir.

Q. Do you refer to the Weston resolution when you speak of resolution?

A. Yes sir.

Q. What was the understanding of the Board as to whether that was to be the value of the property or not, the entire value of the property?

A. I voted for that resolution with the understanding that that was a step in considering, under the statute, the different values of the railroad property of the state, and not to be conclusive

490 as to an assessed value, but a preliminary step to ascertain the value.

Q. The Board reached a conclusion to put an estimated value on that physical property, did it?

A. Well, we went over the different classes of physical property and we made some change in what they had reported: added to it, both in the right-of-way and the buildings, and the bridges, perhaps. I don't remember all, but some property we increased.

Q. After you had got through with that test of value, what did you do?

A. We took up the stock and bond proposition; tried to ascertain the value of the stocks and bonds, I think the reports of the company indicated the amounts of the stocks and bonds.

Q. In making that test, did you accept the mileage as returned by the Company as true?

A. Yes sir.

Q. And the total issue of its stocks and bonds as true?

A. Yes sir.

Q. And as to the value, what did the Board do?

A. You mean the value of the stocks and bonds?

Q. The stocks and bonds.

A. Well, there was considerable discussion of that. As I said a while ago, Mr. Pollard, did not seem to give us definite information in regard to the stocks. It went from, I think, 160 to 165 and up to $200. I think I had some conversation with some officers of the road as to this matter; they contended it was less than $200. This fact was drawn out, if I remember right, that there had been no sale of the stocks, because they were in a merger and held
491 by some company, I don't remember the name of the Company.

Mr. MORTENSEN: The Northern Securities Company.

The WITNESS: Northern Securities Company, perhaps.

Q. Do you remember what the result of your deliberations were as to the value of the property in this state per mile of complainant company as indicated by the stock and bond test?

A. Well, not definitely; I should think, say between forty two and forty five thousand dollars. Of course, that would be varied by the price of the stock, but think it was not less than $42,500, the estimate.

Q. Well, after considering the value of the property by that test, what did the Board do then? Did you take up any other test?

A. Took up the net earnings test and discussed the rate that they should be capitalized at, in order to obtain a fair valuation of the road.

Q. Where did you get the net earnings of the Company in this state?

A. From their reports.

Q. Is Exhibit 7, in evidence, the return you speak of?

A. This copy you mean (indicating)?

Q. Yes.

A. My recollection is that it was.

Q. You took that as true?

A. Couldn't do otherwise.

Q. At what rate did you capitalize the earnings in the state?

A. Well, I think the Board determined 6 per cent., was a fair value on capitalization.

Q. Measured by six per cent. what was the value of the
492 property in this state?

A. There wasn't much difference between that and the

value by the stock and bond test; it ran from $42,000 to $45,000 is my recollection.

Q. Did the Board, after considering these several tests, afterwards reach a conclusion as to what the road should be assessed at?

A. They did.

Q. Do you remember what that was per mile?

A. $38,750, I think it was, if I remember right—that is my recollection.

Q. That is the figure at which you remember it was assessed?

A. Yes sir.

Q. Was that your judgment and that of the Board at the time, agreed upon by all of you to be the value of the road?

A. The Board fixed that as being in their judgment a fair value of the property.

Q. And in that, did you intend to, and did you, assess the property locally assessed, or include property locally assessed?

A. No; we deducted such as the Havelock shops and other property not on the right-of-way.

Q. That represented the average value per mile of the entire property of the Company in this State?

A. Yes sir.

Q. How did you distribute that over the sub-divisions and branches?

A. After we arrived at the total value of the property in system, we asked Mr. Pollard to assist us in making the distribution over the different roads in the system.

493 Q. In the distribution, you put a higher valuation on some miles than you did on others?

A. Yes; we distributed it in our judgment—we had no net earnings whatever for each of these, so that we could tell. The net earnings were returned in a gross amount for the state, and the Board was at a great disadvantage in making that distribution, and they asked Mr. Pollard, and I think he agreed to give us an estimate at one time.

Q. Did Mr. Pollard, or any other representative of the company protest or object to this distribution?

A. No; in fact, we rather expected him to help us in making this distribution and tried to get him to do so.

Q. After fixing the value of the railroad properties for assessment, the Board adjourned, did it?

A. Yes; after completing the work of the assessment of railroads, it adjourned.

Q. Do you remember when the Board met as an equalization board?

A. I think it was in July; the day fixed by statute, perhaps the third Monday, but I am not sure about that. The statute fixes it, and we convened on the date fixed by the statute.

Q. Did the Board have before it at that time the certificates from the several counties as to the valuation of the railroads, that had been made by the assessors?

A. I think we did, a very few, but they came in a few days afterwards, so before the board reached their findings, they all came in.

Q. Was there any objections made as to under-valuations of property other than railroads in this state?

A. There were.

494 Q. The complainant company, did it have a complaint before you of that kind?

A. Well, I haven't looked at these files, and I don't remember of any.

Q. Well, whatever complaints were before the board, what did the board do with them?

A. They were mostly from different counties. Some counties were assessed up to the full limit, they stated, and others below, and they appeared to ask us to raise certain counties, and lower their own counties.

Q. Did, or did not, the board consider all the objections that were before it?

A. Yes, yes; they were all under consideration. Whatever was filed from any source was considered.

Q. Did you take any testimony or hear any arguments on valuations?

A. We did. I think we were in session perhaps three weeks, about that; we gave it great consideration and took plenty of time.

Q. What information did you have before you as to the valuation of lands in the state?

A. Well, prior to the meeting of the Board, it was the understanding of the Board that Mr. Follmer, the land commissioner, should ascertain from different counties, the average sale value of all lands transferred, of 40 acres and upwards, in each county for the previous year, and I remember that he asked me to get it from Polk County.

Q. Did you do so?

A. We did.

Q. Did he take that examination and report to the Board?

495 A. Yes, we had it under consideration when we met as a Board of Equalization.

Q. What was the final judgment of the board with respect to the valuation of other property?

A. Well, we raised the value by a per cent., I think, of 24 counties, from 2 to 10 per cent., is my recollection. I think there was one county two per cent., and the highest in any other, I think, was 10 per cent.

Q. Did you lower the valuation in any county?

A. We did not.

Q. Why did you raise the valuation in the 24 counties?

A. We raised it largely on the ground that the certified statements that Mr. Follmer obtained that the lands previously had sold for an average value of more than they were assessed at this year, and we raised it by a per cent. to bring it up to make a gain in valuation, in order that the assessment of the counties might be equal.

Q. After you had raised these counties, whatever per cent. you did

raise them, did the assessed value as it then stood represent in the judgment of the board the full actual value of the property of those counties?

A. Yes.

Q. Why didn't you raise the valuations in the other counties?

A. Because the testimony evidently that we had before us did not justify it.

Q. What did the testimony before you show as to whether or not property in these counties that you did not raise had been fully assessed or not, fully valued?

496 Mr. GREENE: Complainant objects to that as being incompetent and immaterial.

Question withdrawn.

Q. You have testified, Governor, that you raised the value in 24 counties, in order to have the property assessed at what you thought it was actually worth, now, why didn't you raise the assessed value of the property in other counties?

A. Because the evidence before us did not justify it.

Q. What do you mean by "did not justify it?"

A. Well, the average value of lands sold previous to that showed that they were assessed up to their value. And I might add in a few counties exceeded it.

Cross-examination.

By Mr. CHAS. J. GREENE:

Q. Did you take into account the sales of lands in various counties where you investigated?

A. I think we had from eighty odd counties the average sale values; some western counties we did not get, but all the eastern counties.

Q. From the records?

A. Taken from the records, yes sir; showing the sales of the year previous.

Q. Governor, in valuing the railroad properties of the state, you just agreed upon the value of the physical property, as I understand it, as a railroad?

A. Under the Western resolution we went over the physical property.

Q. And you agreed that whatever the result was, that
497 that was a fair estimate of the physical properties of the railways, combined into a system of the state?

A. It is the duty of the Board to canvass and ascertain whether the value had been fairly returned, and we went over it.

Q. And you agreed under that resolution what they were worth—you extended opposite every item the value thereof?

A. Some items, I said, we raised, above what the roads returned it at.

Q. Now, was there any controversy finally between the members of the Board as to what the value was?

A. No; because we did not consider that as the main factor, or the only factor to be considered in ascertaining its value for assessment purposes.

Q. Did you give any further consideration to the results agreed upon—did you make any further use of them?

A. I think it was discussed at the time the final findings were made, the same as the stock and bonds and net earnings were discussed.

Q. You then took up the value of the system on the stock and bond basis, didn't you?

A. Yes sir.

Q. And under that method, you took the value of the stocks and bonds and divided it by the total mileage of the system, and that gave you a result per mile of the system?

A. Yes.

Q. Now, the only difficulty you had there was in fixing the value of the stock, wasn't it; I mean in agreeing upon it?

A. My recollection is we could not definitely, of course, de-
498 termine the real value of the stock.

Q. Now, the stock had varied in its market price during the year from 120 up to 200, hadn't it?

A. Well, prior to the merger there were quotations, if I remember right, showing what the price of the stock was, but I don't remember just what it was; and then after the merger, it was testified by Mr. Pollard that there had been no stock sales made.

Q. Prior to the time when the merger was being consummated, the average price of the stocks of the Burlington system had been not over $130, had it?

A. Well, it varied a good deal; I remember that it was higher at the time they had the traffic of the Rio Grande, the earnings were so much heavier.

Q. Well, the traffic over a line of railroad like ours in this state varies from one cause and another from year to year, doesn't it?

A. I think it does.

Q. No one factor would particularly influence the stock market because its effect might be off-set by some other factor?

A. I presume a little variation in the stock would not affect the valuation of the road.

Q. The point I am getting at is, that prior to the beginning of the proceedings to merge the road, the highest the Burlington stock had ever reached was in the neighborhood of 130?

A. I don't remember, but I think the board finally concluded that that did not enter into the valuation of the road that year.

Q. I am asking you for the facts, of what you did consider. Did you consider it or not?

499 A. It came in under the discussion, I think, of the value of the road; I think we went over it for ten years back.

Q. It had been down as low as 50 in 1903, hadn't it?

A. I wouldn't swear what the lowest was, nor what the highest was, because I don't know as we considered that.

Q. Wasn't it true that the stock did run up from 130 to 200 dur-

ing what was generally known as the operations to secure the merger; don't you know that as a matter of general public notoriety?

A. We understood, and I think it was testified to by Mr. Pollard and others, that at the time of the merger, the stock was up to 200.

Q. Yes, and it came up there by almost a continuous rise while they were buying it in, didn't it? You understood that, didn't you?

A. My recollection is that it was agreed between the parties what they should pay before they formed a merger.

Q. You are a banker and a business man, and don't you know as a matter of general notoriety that for a time previous to the merger there was a great activity in the stocks of the Burlington company?

A. Well as I said a while ago, it did fluctuate considerably and one statement was made——

Q. And it steadily rose in value from the neighborhood of 130 to 200?

A. I don't remember that, Mr. Greene.

Q. Don't you know that they reached the 200 point just before the merger, 196 to 200?

500 A. I don't remember as to that.

Q. And don't you know that as soon as the merger was effected the stock was all retired, because the parties interested had gotten control of the property?

A. I think there was some testimony given before us to the effect that when the merger was accomplished they took the stock of the C. B. & Q.——

Q. And the property was turned over to Mr. Hill and his associates——

A. Yes, at 200.

Q. Do you know any time in the history of the road, when as a business proposition the stock ever exceeded in value 135 or 136, prior to the merger campaign?

A. I never looked that up very carefully and I have no recollection as to it.

Q. Have you any impression about it from your general knowledge of railway stock?

A. I know the net earnings were very heavy at the time they had the Rio Grande business, but I don't know what the price of the stock was then. I have some recollection that at the time I was associated with Governor Nance that he bought some C B & Q stock, but I don't know what he paid.

Q. It was an important thing with the members of the Board to consider quite thoroughly the history of the stocks of the Burlington, as long as you were trying to put a value on the property by estimating the stocks and bonds?

A. I think the board generally conceded that having been exchanged 2 for 1 in bonds, that that fixed very closely the value of the stock.

501 Q. For the purpose of taxation?

A. Well, in ascertaining the value of the road under the stock and bond proposition.

Q. Whether the merger would be a success was problematical and was so considered by everybody?

A. It had been done then.

Q. But it was problematical as to whether it could be maintained as a business proposition, was it not?

A. I think there was a suit pending to dissolve it.

Q. Well, aside from that, the question of whether the properties inside the merger could produce enough revenue to sustain the merger, was problematical at that time, was it not?

A. Well, that would depend on the amount of business the road had to do.

Q. Well, I am asking you as a matter of fact now, in the atmosphere, the financial atmosphere, and financial circles, wasn't it considered as a problematical matter whether Mr. Hill could make the combined properties earn enough revenue to make the merger a success?

A. The general supposition was that it was worth as much whether Mr. Hill owned it, or whether he didn't; the property was good property.

Q. Do you remember what you said in your calculations that the stock was worth per share?

A. Well, there was no definite conclusion as to that arrived at by the board.

Q. Did you agree tentatively on what you would call the stock worth in this calculation?

A. We estimated that it would run from $42,000 to
502 $44,000, stocks and bonds.

Q. You mean per mile?

A. Yes, sir.

Q. But that is not what I am asking you. That is the result. What I am asking is, when you were considering the value of the stocks, what did you agree finally, or say, that the stocks were worth?

A. My recollection is there was no definite amount actually fixed.

Q. Well now then, Governor, you didn't agree upon what the stock was worth?

A. Yes; very close to it; we didn't vary much.

Q. What did you say they were worth; that is what I am asking you?

A. Well, as I said before; we understood they had been turned in at $200 for $100.

Q. Well, I understand that; but did you say in your calculations upon the stock and bond proposition that the stock was worth $150,000,000 or any other sum?

A. No; the assessment arrived at would show that we figured it at less than that.

Q. No; I don't care about that—what I want to know is what you four men did, what you agreed upon.

A. The Board at that point did not determine that; they agreed it was worth——

Q. No; I don't want any explanation. Now then, when you took the bonds, what did you say the bonds were worth?

A. At par, I think.

503 Q. That is something definite, isn't it?

A. Yes; because there is a stated amount of interest being paid on them.

Q. There are a hundred and fifty six million of dollars, but when you went over the stock proposition, you didn't agree upon anything there, did you?

A. No, because Mr. Pollard couldn't determine that, and the road didn't return that.

Q. Very well, you keep giving me the reason, "because" and I don't care about the reason; all I want to know is the fact; you didn't do it, did you?

A. We didn't fix that definitely on the stock, but we considered it worth nearly 200.

Q. But you had to in order to get at the forty odd thousand dollars a mile, didn't you?

A. No, sir; we simply wanted the facts before us, and we acted on the facts.

Q. Very well, could you make the calculation on the stock and bond proposition without fixing some sum as the value of the stocks and bonds?

A. No, we would have to, in our judgment, fix the approximate value.

Q. And what in your judgment did you say the value was?

A. I wouldn't swear definitely the exact amount that was fixed, but I remember that 165 was discussed, and the net earnings had been less that year than previous.

Q. But we are talking about the stocks and bonds, not net earnings.

A. I am trying to answer your question; we endeavored to get the value of the stocks and bonds.

504 Q. You have no recollection of any understanding, tentative or otherwise, between the members of the Board, that the stocks and bonds should be called worth so much do you?

A. No because Mr. Pollard couldn't tell us.

Q. Never mind the "because," but do you remember that?

A. I will answer that the Board did not reach a definite conclusion as to the value of the stocks and bonds.

Q. Did they reach any conclusion?

A. Very nearly, yes sir.

Q. Did they say between themselves, "we will call the stocks and bonds worth three hundred million" or any other sum?

A. My recollection is that they were worth pretty close to 200 cents I don't remember the exact amount of stock issued now, but they made the estimate on that basis.

Q. Did you use the total mileage of the system as the divisor, in making this stock and bond estimate?

A. After we got the total amount of stocks and bonds and their value, then we divided by the total number of miles to get the average per mile.

Q. Now, what was the dividend, if the mileage was the divisor?

A. Between forty two and forty four thousand, is my recollection.

The ATTORNEY GENERAL: The witness misunderstood the question.

The WITNESS: I understood the question to be what was the result.

Q. No; what was the dividend?

A. The dividend was the total amount of the value of the stocks and bonds, estimated.

505 Q. What was the total estimated value of the stocks in that calculation?

A. I don't remember the exact figures.

Q. Did you make any?

A. Yes.

Q. That is what I am trying to get at.

A. Yes; we had paper and was figuring constantly.

Q. Each fellow was sort of figuring it up by himself, wasn't he?

A. Well, sometimes one and sometimes the others were figuring.

Q. Didn't you sort of look that over and say, "Well, this is about forty-three thousand; let it go, as that is a mere tentative matter"?

A. No; we actually made figures.

Q. Well, Governor, do I understand that you, in a careful businesslike way, was ascertaining the value of the road per mile on the stock and bond basis? Or did you merely make a sort of rough estimate?

A. We arrived at our judgment as to what would be the value of the road on the stock and bond basis.

Q. You had the number of the bonds, and you valued that number did you?

A. Well, the road returned what they were, and what was the value, I think.

Q. But the road did not return the value of the stock?

A. My recollection is that they did not.

Q. Then, what did you do to get at the value of the stock?

A. Well, we called Mr. Pollard before us and consulted Clews' Financial Book and Poor's Manual, and others.

Q. What did you then say the value of the stocks was?

506 The ATTORNEY GENERAL: The respondents object to this for the reason that he has gone over the same matter with this witness and the witness has already answered that he does not definitely remember, but that it was somewhere about 200 cents on the dollar.

A. Well, on the information we had before us, the best we could obtain it was 200 cents on the dollar.

Q. Now, coming to the earnings proposition, did you have the earnings of the total system before you, of the entire system?

A. My recollection is that the return of the road would show that.

Q. Did you have the earnings of the state before you?

A. Yes sir; I think we did.

Q. Now, in the total earnings reported, you took as a basis of valuation in the state, did you, on one theory?

A. My recollection is that the net earnings per mile were something over $2500, and the net earnings were capitalized at 6 per cent.

Q. And that gave you the mile value of the road?

A. Yes sir.

Q. Now, did you take the total net earnings or the gross earnings?

A. We took the net earnings, of course; we had the gross earnings and the operating expenses all before us.

Q. And you took the net earnings then, but did you take into consideration the taxes, or was it exclusive of taxes?

A. Exclusive of taxes.

Q. And divided that by the number of miles in the state?

A. Yes sir.

507 Q. And that gave you the net earnings per mile?

A. Yes sir.

Q. And then you took those and capitalized them at 6 per cent.?

A. In order to get at a fair valuation of the property.

Q. Well, I am just asking you if you did?

A. Yes sir; we did.

Q. Now then, after you did that, it gave you the value of each mile, the average value of each mile in the state, did it?

A. Yes sir.

Q. And made one mile as valuable as any other, did it not?

A. Yes sir.

Q. And then afterwards, you redistributed the valuations according to the condition of the property's business?

A. After we obtained the value of the system, then we distributed it as best in our judgment it should be done.

The ATTORNEY GENERAL: Do you mean by the "system," the system in the state?

The WITNESS: Yes sir; the system in the state. They have, I think, about sixteen different corporations, but it is operated under one system and the net earnings are shown for the system, but no net earnings shown for each corporation.

Q. Now then, you recall that Mr. Pollard was before the Board two or three times, was he not?

A. Yes, Mr. Pollard was there a good many times.

Q. And particularly making a showing as to the earnings in the State, was he not? verbal, as well as otherwise?

508 A. Yes; we went over the matter very thoroughly with him.

Q. He called your attention, did he not, to the circular which is published, with regard to the division of earnings between the different states?

A. I remember that a statement was made that the earnings in this state was one and a quarter to one east of us.

Q. But the board did not make any deductions on that account, did they, as a matter of fact?

A. Well, the Board went into that and discussed it some.

Q. Well, but I am asking you whether or not they did, finally after all discussion adopt the return made, or did they take the re-

turns less this four per cent.—or rather this one quarter fictitious earnings—which did they adopt?

A. I think the Board decided that the returns made should govern the value of the property as returned by the road. Yet, that was not fixing the assessed value; that did not determine the assessed value.

Q. Having done that, you got the valuation of the property in the state in that way; that is, you tentatively got that?

A. That is one of the factors that were considered.

Q. Now, when you finally came to determine the matter, you had three factors, did you not?

A. Yes sir.

Q. You had the total value of the physical property?

A. Yes sir.

Q. Which you had worked out in dollars and cents?

A. Well, not definitely, but approximately.

Q. You had the value of the property worked out on the
509 basis of the earnings in the state, did you not, in dollars and cents?

A. Yes sir.

Q. You had the value of the property worked out, of the entire system, on the stock and bond basis, did you not?

A. Yes sir.

Q. Now, how did you manipulate these three different factors in order to produce the final result.

A. We considered that the stock and bond values——

Q. I don't want to know what you considered, but what you did?

A. That's what I am trying to tell you.

Q. Well, I will put it another way then,—well, go on and answer that.

A. We considered the stock and bond value represented the value of the whole thing, tangible and intangible, and the net earnings would show, capitalized at six per cent., the value of the whole thing, both tangible and intangible; then in fixing the value afterwards, after making the deductions for property off of the right of way, in order to be conservative, we aimed to be, and we made it $38,750 a mile.

Q. Now, this $37,000 and more was not the result of any mathematical caculation by either one of the three methods, was it?

A. Not exactly, because we could not determine——

Q. Now, you get right back to the cause. I understand you couldn't determine. I am asking for what you did. There is no use of your arguing the case. Mr. Brown will do that. What you did is all I am asking, but what your motives were I don't ask; I am not attacking you in this case.

A. We couldn't determine that because there was some dis-
510 pute as to the real value of the stock, because there was no sales, but it represented a conservative value of the property.

Q. That is to say, it represented a guess along conservative lines?

A. No sir; if I was going to buy it, that is the way I would try to figure it; I would think it was conservative.

Q. You did not attempt by any mathematical calculation to merge these three methods, did you?

A. No; we did not.

Q. About all you describe when you say you considered, is the impressions and feelings and inferences that were in the minds of each member?

A. Now, let me answer that. We had before us our conclusion as to the stock and bond value, and the net earnings value, capitalized at 6 per cent., as near as we could estimate it, and we considered that either one of those was a fair test of the value of the property, and we fixed as a conservative value, after considering all matters, $38,750 per mile, as the value of the entire system.

Q. You took, practically, then, that the stock and bond test was a fair expression of it, did you, in a conservative way?

A. No; we considered the net earning test

Q. Did you in your final judgment pay any attention to the stock and bond test?

A. Oh, yes sir.

Q. Did you form any conviction with reference to the stock and bond test—based on it?

A. Yes.

Q. Did you form any judgment based upon that stock
511 and bond method which you finally used in your last judgment or conclusion?

A. Why, surely we did.

Q Now, isn't it true, Governor, that in fixing the value of a railroad, upon the stock and bond basis, that the mere value of any portion of its physical property can be of no practical aid; do you see, Governor, what I mean?

The Witness hesitates.

Q. If you go to work and say that the stock is worth a hundred and fifty million and the bonds worth a hundred and fifty million, or three hundred million—what difference does it make whether 100 miles of road are worth a hundred thousand or twenty thousand or a million dollars?

A. Well, I presume if I was going to buy a railroad, I would look at its physical value, and I would look to see what its net earnings were, and I could tell how much it would take to improve its physical condition, and it would be a factor.

Q. It would be a factor in determining the value of the stocks and bonds, but the value of it independently would be of no aid in that regard?

A. I think the statute contemplates that it would be of some assistance to the Board in arriving at the value of the road, in considering its condition and so forth. The statute directs that it be done that way, and the Board followed that method.

Q. Now, I suppose of course, the physical condition of a road is an important factor in the value of the stocks and bonds, is it not?

A. Well, I suppose it is, because the law requires them to show the kinds of ballast, and so forth, and the number of miles
512 of ballast, and the weight of rails, and the——

Q. Well, it would be in any business proposition, wouldn't

it; I have just simply asked you a question, and you have taken half a page to answer it.

A. Well, I suppose so.

Q. And so far as the earnings are concerned, they are implied in the stock and bond value, are they not?

A. My judgment is that the earnings indicate the value, yes sir.

Q. Of the stock and bonds?

A. Yes sir.

Q. That is to say, the cost of maintenance and other fixed charges, including dividends and interest have got to come out of the earnings of the road?

A. The fixed charges, yes sir.

Q. And, of course, in that way the earnings are a primary factor in the value of the stock and bonds?

A. I should think so; that shows what the owners of the road will get.

Q. So that when you consider the physical properties of a road, and its earning capacity and earnings, you are considering the elements which go in to fix the value of the stock and bonds are you not?

A. Well, I would regard the stock and bonds, and what they pay the holders and the net earnings as prime factors in determining the value.

Q. So that in putting a value upon the property of the Company, the important factor was the stock and bonds?

A. Well, the stock and bonds and the physical condition of the tangible property, yes.

513 Q. But, in your deliberations, and your judgment, you fixed finally the value, by giving consideration and weight to the value as worked out on the stock and bond proposition?

A. No sir; I——

Q. Now, do you mean to say that in fixing your final valuation, that you did not give any consideration to that?

A. Please read the question again.

Q. (Read:) But in your deliberations and judgment, you fixed finally the value by giving consideration and weight to the value as worked out upon the stock and bond proposition?

A. We used the value estimated value—under the stock and bond proposition, and the net earnings together, with the tangible value in determining the value of the road.

Q. In fixing the value of the "Q" stocks after the merger, did you take into account the circumstances that $100 worth of stock brought $200 in bonds, and did you consider that the bonds were secured on 20 instead of 8,000 miles of road?

A. My recollection is that there was some statement made that some portion of the road had no stocks and bonds issued on it.

Q. Well, now; of the merger bonds, they got two for one, and you know that the bonds were secured by something like 20,000 miles of road, instead of 8,000 miles, being the original mileage of the C B & Q?

A. I remember there was a surplus of some twenty odd millions that went in connection with the system.

Q. No; that is another thing—but that is all.

Witness excused.

514 R. D. POLLARD, a witness on behalf of the complainants, having been heretofore called, sworn and examined, and cross-examined, is at this time called for further cross-examination, as follows:

By Attorney General BROWN:

Q. Mr. Pollard, you promised to get me the valuation of the terminals at Omaha, have you that with you?

A. Yes, sir.

Q. What are they?

A. As I testified the other day, in Omaha the real estate amounts to $750,850.00; the main track, side track, bridges, and so forth, amount to $270,464.63; the buildings, $327,505.00; the rolling stock on 6.64 at $2,000 per mile, which is an estimate, amounts to $13,280, making a total of $1,362,099.62.

Q. At Lincoln, what are the terminals worth?

A. The real estate $571,136.00; main and side tracks, bridges and so forth, $259,042.26; the buildings, $94,250.00; 6.01 miles of rolling stock at $2,000 per mile, which is also an estimate, amounts to $12,020.00; that makes a total of $936,448.26.

Q. You haven't got the values of the terminals at Hastings or McCook, have you, Mr. Pollard?

A. No, sir; I didn't understand I was to get them.

Q. I call your attention, Mr. Pollard, to respondent's Exhibit No. 7, in evidence; do you recall that being before the Board for consideration?

A. Yes, sir.

Q. That purports to give the net earnings of the complain-
515 ant company in this state, does it not?

A. Yes, sir.

Q. Was that the only report or return made by your Company to the Board with respect to net earnings in this state for the preceding year?

A. As far as the Auditor is concerned, yes; but when I appeared before the Board, when they asked me to testify as to the value of the stocks and bonds, they put me under oath at that time, and I called attention to this arbitrary of one and four tenths of a mile, at that time, under oath.

Q. But was this the only statement made by the company in writing under oath, with respect to the net earnings of the Company in this state?

A. I think so, yes, sir.

Q. To refresh your recollection, isn't it true that there was another, a return of earnings, made by your company to the Board, showing much larger net earnings in this state than this one?

A. No, sir; I think you will find that that was for the whole system west of the Missouri River.

Q. Would you be able to identify the return if you should see it?
A. I think so.
Q. (Handing the witness respondent's Exhibit 14.) I will ask you if that is the return you refer to?
A. These are the earnings, as I have already stated, on all our lines west of the Missouri River.

Mr. GREENE: Just go on and state the number of miles that it comprises.
The WITNESS: These earnings represent the earnings on something over four thousand miles of road west of the Missouri,
516 and including a little, of course, in Iowa and Missouri.

Q. You say that this Exhibit 14 is a return of the total gross earnings and the net earnings of the complainant company in all the states west of the Missouri River?
A. Yes, sir.
Q. Does it so state?
A. Yes, sir.

The ATTORNEY GENERAL: The respondents now offer in evidence Exhibit 14 above referred to. Exhibit No. 14 is received in evidence, and is as follows: (See next page.)

517 RESPONDENTS' EXHIBIT No. 14, C. W. P.

Statement of Earnings, Operating Expenses and Taxes on the Chicago, Burlington & Quincy Railway Company's Line, known as the Burlington & Missouri River Railroad in Nebraska, for the year ending June 30th, 1903.

Gross Earnings		$21,857,676.42
Operating Expenses		12,576,345.10
		9,381,331.32
Taxas Paid		747,182.18
Net Earnings		$8,634,149.14

STATE OF NEBRASKA, *County of Douglas, ss:*

I, W. P. Durkee, Auditor of the above named Railway, do solemnly swear that the above statement is true and correct, to the best of my knowledge and belief.

W. P. DURKEE, *Auditor.*

Subscribed and sworn to before me this 25th day of May, A. D. 1904.

[SEAL.] S. N. MEALIO,
Notary Public.

Endorsed on the back: Filed June 11th, 1904. Chas. Weston, Sec. *pro tem.*

End of Exhibit No. 14, C. W. P.

518 (Cross-examination continued, as follows:)

Q. On your direct examination, this question was asked you: "What would be the earnings, based upon the actual mileage in the state?" to which you answered: "I can only make an estimate of that at this time, but I would say that the net earnings would be reduced about $1,700,000, and that would make the net earnings, $5,071,000.00 instead of $6,771,000.00." After which you were then asked this question: "Was that statement put before the State Board of Equalization at the time they made the assessment?" to which you answered: "No sir; it was not for last year."

A. Yes; that is right.

Q. That is true, is it?

A. Yes sir.

Q. Then you never asked the State Board of Equalization to figure the net earnings at any particular sum less than that returned in Exhibit 7?

A. I called the attention of the Board to that arbitrary, and they did not ask me to give any figure as to how much of a decrease that would make in our earnings.

Q. Therefore, you gave no figures?

A. No sir.

Q. You asked for no reduction in dollars and cents?

A. Not directly.

Q. The fact is, you never put much faith in that claim, did you, until this year?

A. I brought it particularly before the board on two occasions to my certain recollection, but everything was new, and we were
519 operating at that time under a new revenue law, and I didn't know at that time how much the state board would consider the earnings, the net earnings, you might say, in making our assessment.

Q. You knew during the time your assessment was being made, that they were considering the earning capacity of the road, didn't you?

A. Yes sir.

Redirect examination.

By Mr. GREENE:

Q. I understand you called the attention of the Board on two or more occasions to the system of crediting the roads in this state with more mileage than they actually hauled?

A. Yes sir.

Q. For what purpose?

A. For the purpose that they should know that the earnings we showed, we really didn't earn.

Q. For the purpose of having the Board make the necessary deduction?

A. Certainly.

Q. That was your argument?

A. Yes sir; that was my idea.

Q. Well, now then, is there some correction you want to make in your former testimony, do I understand you?

A. Yes sir; it is as to the figures as to the quotations for the C. B. & Q. stock shown on page 128 of my former testimony.

Q. I call your attention then to the item on page 128 of your testimony, as follows:

520 "1901 — 192 April — 138 — Jan. — 165."

Do you desire to correct that?

A. I do; it should be nearly 200; that would make a difference in the total of the average for 11 years of 73 cents; making a total of $103 a share.

Recross-examination.

By Attorney General BROWN:

Q. Mr. Pollard, what is the reason for this rule generally referred to heretofore in your examination by the term fictitious mileage—why does the company have that rule?

A. I don't know.

Q. Isn't it because freight charges in Nebraska and west of the river are higher than freight charges east of the river?

A. I do not know the freight rates on any commodities anywhere.

Q. Don't you know that as a general proposition, freight rates are higher over the Burlington lines west of the river than they are east of the river?

A. That may be true, but I don't know it of my own personal knowledge.

Redirect examination.

By Mr. GREENE:

Q. Or officially?

A. No sir.

Witness excused.

521 DISTRICT OF NEBRASKA, *ss:*

I Charles W. Pearsall, Examiner, hereby certify that the foregoing testimony in the above entitled cause was taken before me at the times and places in the record thereof indicated; that before testifying each of the several witnesses was by me severally and duly sworn to tell the truth, the whole truth and nothing but the truth; that said testimony was taken in shorthand by myself, and by myself transcribed as hereinbefore set forth, and that by consent of parties the signature of each of the witnesses to their respective depositions as so extended was waived.

CHARLES W. PEARSALL, *Examiner.*

Endorsed: Filed Dec. 27, 1905. Geo. H. Thummel, Clerk.

522 Thereupon afterwards, to-wit:—On the 27th day of December, 1905, Volume Four of Testimony taken on behalf — Complainant *et al.* was filed in said case, which said Volume Four is in words and figures following, to-wit:—

In the Circuit Court of the United States within and for the District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
F. C. BABCOCK, as Treasurer of Adams County, Nebraska, *et al.*, Defendants.

Testimony taken on behalf of the Complainant, Chicago, Burlington & Quincy Railway Company; also testimony taken on behalf of respondents, F. C. Babcock, as Treasurer of the County of Adams, State of Nebraska, *et al.*, under the sixty-seventh rule of the Supreme Court, as amended, pursuant to agreement between the parties hereto, beginning October 24th, 1905, at 2.00 o'clock P. M., at Room No. 711, New York Life Building, in the City of Omaha, Douglas County, Nebraska, before me, Charles W. Pearsall, an Examiner in Chancery of the United States Circuit Court for the District of Nebraska.

Present: Charles J. Greene, Esq., James E. Kelby, Esq., Solicitors for Complainants. Norris Brown, Attorney General, W. W. Slabaugh, County Attorney, Douglas Co., Solicitors for Respondents.

523 It is hereby stipulated and agreed that the testimony may be taken in shorthand by Charles W. Pearsall, the Examiner before whom this testimony is being taken, and by him extended into longhand.

OCTOBER 24TH, 1905—2.00 p. m.

Respondents here offer in evidence Bulletin No. 21 of the Department of Commerce and Labor, Bureau of Census of the United States.

Same is marked Exhibit 15, and is herewith presented, but is not copied in this record.

The Respondents now offer in evidence the report of George D. Follmer to the State Board of Equalization and Assessment, which report sets forth the number of acres, the amount which the same sold for, the value per acre, and the amount for which the same was assessed in the year 1904, for each county in the state of Nebraska; which said report was testified to by Governor Mickey as being under consideration by the Board, as to the prices for which said lands were sold, and as to the various items of information set forth therein, in the year 1904.

The same is marked Exhibit 16.

It is agreed by and between the parties to this case that the orig-

inal Exhibit 16, as above described may be withdrawn, and a copy thereof substituted in this record therefor, said copy to be considered, for all purposes of this case as though being the original.

524 Exhibit 16, above referred to is as follows:

(See next page.)

The further taking of testimony in this case was then adjourned by agreement of all parties until Wednesday, October 25th, at 10.00 o'clock A. M.

525 EXHIBIT No. 16, C. W. P.

	No. acres.	Am't sold for.	Value per acre.	Ass'd 1904.
Adams	11,797.57	$330,950.00	$30.40	30.25
Antelope	22,856.57	387,309.60	16.95	15.25
Banner	8,941.97	21,860.00	2.45	2.00
Blaine	.....	.....	.....	.....
Boone	10,885.05	383,310.06	35.14	26.30
Box Butte	10,168.47	27,473.52	2.72	1.95
Boyd	11,798.13	229,703.00	19.47	15.45
Brown	6,720.92	43,884.00	6.53	6.35
Buffalo	34,560.80	527,761.00	15.27	18.45
Burt	11,357.31	583,117 00	51.34	47.40
Butler	49,404.22	2,095,024.00	42.59	46.50
Cass	14,629.27	851,902.00	58.24	60.35
Cedar	23,152.22	784,775.50	33.89	30.20
Chase	9,762.35	31,619.00	3.23	2.30
Cherry	30,202.83	192,520.00	6.38	3.60
Cheyenne	20,407.79	104,936.00	5.14	2.35
Clay	15,167.28	530,948.00	35.00	34.75
Colfax	13,813.41	694,379.00	50.27	49.90
Cuming	6,648.79	367,129 08	55.22	54.65
Custer	30,557.56	211,376.00	6.92	7.10
Dakota	4.811.00	206,803 00	42.98	34.85
Dawes	8,879.00	23,480.00	2.65	3.00
Dawson	38,508 37	479,981.99	12.46	12.50
Deuel	4,990.80	.....	4 65	1.80
Dixon	12,329.67	454,321.25	36.84	35.35
Dodge	6,223.01	358,647.00	57.63	52.75
Douglas	5,819.25	361,110 33	62.05	64.30
526 Dundy	22,355.53	90,703.00	4.05	3.10
Fillmore	13,520.18	543,575.00	40.19	38.35
Franklin	8,753.33	147,416 70	16.85	18.60
Frontier	12,073 70	75,568.00	6.25	5.15
Furnas	20,938.93	194,480.75	9.29	12.15
Gage	13,447.37	634,995.00	47.22	43.20
Garfield	4,435.53	33,930.00	7.65	7.95
Gosper	13,328.37	121,723.00	9.14	10.85
Grant	3,823.44	28,065.00	7.34	6.60
Greeley	19,406.32	265,707.50	13.70	14.75
Hall	15,300.09	423,297.00	26.90	30.10
Hamilton	10,747.23	465,041.00	43.27	42.40
Harlin	4,141.40	48,700.00	11.76	15.10
Hayes	15,766.42	46,478.00	2.95	2.80
Hitchcock	16,012.36	71,045.00	4.42	4.90
Holt	29,508.38	239,514.00	8.12	5.60
Hooker	.....	.....		No land sold
Howard	25,312.37	470,642.00	17.88	14.70
Jefferson	14,914.43	503,307.00	34.42	31.80
Johnson	6,794.67	338,041.00	49.75	43.10
Kearney	21,350.50	490,170.00	23.96	22.95
Keith	7,922.84	36,736.34	4.63	2.20
Keya Paha	.....	.....	.....	.....
Kimball	7,320.68	29,750.00	4.06	1.85

	No. acres.	Am't sold for.	Value per acre.	Ass'd 1904.
Knox	20,481.30	$406,304.00	$19.83	18.80
Lancaster	17,876.97	776,221.00	43.42	41.90
Lincoln	23,758.81	121,678.46	5.08	3.30
527 Logan				4.50
Loup				5.10
Madison	15,078.58	517,280.00	34.30	35.20
McPherson	2,875.26	17,530.00	6.44	3.35
Merrick	16,853.61	473,947.00	28.12	27.30
Nance	23,464.74	638,142.33	27.20	30.40
Nemaha	6,629.66	395,045.80	59.58	52.10
Nuckolls	11,493.85	301,208.00	26.21	25.20
Otoe	17,496.90	926,058.00	52.92	59.90
Pawnee	12,745.92	612,903.60	48.08	41.35
Perkins				2.00
Phelps	23,465.34	503,435.00	21.45	19.75
Pierce	24,141.98	681,998.50	28.24	24.95
Platte	5,120.00	242,850.00	47.43	42.40
Polk	10,857.45	462,225.00	42.57	44.75
Red Willow	17,915.87	112,521.00	6.28	7.05
Richardson	7,333.92	424,660.00	57.90	47.05
Rock	12,810.73	114,800.00	8.96	4.90
Saline	10,264.96	419,435.00	40.86	40.45
Sarpy	15,706.00	870,425.15	55.42	59.05
Saunders	10,451.18	551,141.00	52.73	53.65
Scotts Bluff	11,605.48	121,881.00	10.50	7.26
Seward	14,192.48	591,395.00	41.67	44.95
Sheridan	9,600.	30,000.	3.13	3.15
Sherman	19,167.30	230,140.00	12.00	9.90
Sioux	6,361.98	14,950.00	2.34	3.00
Stanton	16,432.88	585,489.25	35.63	31.90
528 Thayer	16,985.95	552,580.00	32.33	31.10
Thomas	3,616.11	15,072.00	4.17	2.65
Thurston	2,180.00	114,233.00	52.40	45.80
Valley	27,951.76	376,024.00	13.55	14.55
Washington	3,632.45	197,148.50	54.27	52.60
Wayne	19,549.29	864,277.14	44.21	46.10
Webster	15,640.45	335,357.00	21.44	21.30
Wheeler	9,526.47	61,315.00	6.45	5.30
York	11,590.08	515,371.00	43.60	43.10

End of Exhibit No. 16, C. W. P.

529 WEDNESDAY, *October 25th*, 1905—10.00 o'clock a. m.

The further taking of testimony in this case was resumed as follows, all parties being present as hereinbefore shown.

LOUIS E. WETTLING, a witness on behalf of the respondents being called and duly sworn, testified as follows:

Direct examination by Attorney General NORRIS BROWN:

Q. State your name, age and place of residence.
A. Louis E. Wettling, 42 years old, residence Lincoln, Nebraska.
Q. What is your business, Mr. Wettling?
A. I am treasurer of the Farmers & Merchants Insurance Company, and acting cashier of the Farmers & Merchants Bank of Lincoln.
Q. How long have you been so engaged?
A. Since 1899—six years.
Q. Prior to that time what was your business?

A. Prior to that time for a matter of about six years, I followed the business of public accountant.

Q. As an accountant were you ever in the employ of any railroads?

A. Not directly. I was employed for a matter of about a year, by the officers of the Union Pacific to examine the affairs of the Auditor's office of the Pacific Express Company.

Q. When was that?

A. That was in 1897 and 1898.

Q. What other experience, if any, have you had as an accountant?

A. I examined the books of the city treasurer of the city of
530 Omaha. I have examined the books of various mercantile houses, wholesale and retail, building and loan associations, and made examinations of three different insurance companies; have had a general experience in the accounting line.

Q. In your present business, to what extent have you had occasion to deal with the values of stocks and bonds, and securities of the various railroad corporations?

A. I follow the market reports in a general way, regularly, taking some of the financial journals; I follow Dun's reports regularly, and occasionally the Wall Street Journal, and have reference to the Financial Chronicle—the Commercial & Financial Chronicle, being the Dana & Co. tables of stock and bond quotations and market values generally.

Q. Are you acquainted in a general way with the Chicago, Burlington & Quincy Railway Company, the complainant in this case?

A. I am, so far as the public generally may be acquainted with them.

Q. Have you made any examination of that company with a view to ascertaining its value?

A. I have.

Q. In making that examination, what data, or information, have you had and relied upon?

A. I have relied upon and had reference to their 49th Annual Report, Poor's Manual, especially for 1904, the edition of 1904, that is to say. The Commercial & Financial Chronicle, reviews and tables, Dun & Company's reports, the Wall Street Journal, and various affidavits in the hands of the State Board of Equalization, and numerous other papers and documents that I do not call
531 to mind just at this moment.

Mr. GREEN: In the hands of the Board you mean, or outside.

The WITNESS: Well, both.

Q. Have you examined and acquainted yourself with the market quotations during the last few years?

A. I have.

Q. Have you examined the bill of complaint in this case?

A. I have, yes, sir.

Q. What information did you have with respect to the earnings of the road in the state, and of the entire system?

A. As to the entire system, I got the information from their 49th Annual Report, and also from Poor's Manual, and as to the earnings

in the state, from affidavits in the hands of the Board of Equalization, a copy of which is marked in this case Exhibit 7, in testimony given, I think, by Mr. Pollard.

Q. You have read Mr. Pollard's testimony?

A. Yes, sir.

Q. Did you make any examination of the schedules of the physical property of this company returned by the company to the state board?

A. No, sir; I paid no attention to them. I saw them, but I paid no attention to them.

Q. Are you acquainted, Mr. Wettling, with the different methods or tests that are sometimes used for the purpose of ascertaining the value of railroad property?

A. I am.

Q. Will you name them?

532 A. The tests most generally used and relied upon by the investing public generally are the net earnings test, the stock and bonds test, and the cost test as well. The net earnings test is generally most relied upon by investors.

Q. What information have you with respect to the cost of complainant's property?

A. None other than I get from their 49th Annual Report and Poor's Manual, which is virtually a copy of it in most respects.

Q. What was the cost of the property as shown by the 49th Annual Report?

A. As shown on Page 22, of the 49th Annual Report, the cost of the road and equipment was $302,654,666.85; the cost of investments in securities of controlled roads, $10,926,110.09, a total of $313,580,776.94.

Q. What did you find the total mileage of the company to be?

A. The total miles owned and controlled are 8,112.77 miles.

Q. Is the mileage referred to as lines controlled by the C. B. & Q. included in the cost as given by the report?

A. It is included in the cost of these two items just last referred to.

Q. What is the mileage owned by the road as separated from that controlled?

A. The mileage of the C. B. & Q. lines proper, actually owned as shown by Poor's Manual, Page 334, is 5,701.26 miles.

Q. That would give the average cost of the road per mile at how much?

A. $5,308.57 per mile, actually owned mileage, that refers to, and using the cost at $302,654,666.85.

533 Q. Now, using the total mileage owned and controlled, what would be the average cost per mile?

A. It would be $38,652.73; that, however, does not show the true value, because of the fact that it is impossible from any of the reports or references that I have looked into to learn the exact proportion of the mileage of controlled roads that is owned, as reflected by the security. In other words, only that percentage of the mileage of controlled roads should be used in the mileage which represents the proportion owned.

Q. Have you the table or memorandum showing the value according to the cost test?

A. I have, yes sir.

The ATTORNEY GENERAL: We would like to put that in as a part of his testimony, just as Colonel Browne did. It is explanatory of his testimony, and we offer the table as a part of the examination of this witness.

Mr. GREENE: He has already stated the facts and the figures.

The ATTORNEY GENERAL: Yes, these figures are all in there, I know, but it is explanatory of his testimony.

Mr. GREENE: Well, of course, this goes in subject to the objections as to incompetency and immateriality all through.

The ATTORNEY GENERAL: Oh, certainly, I understand that.

The Exhibit above refered to, being the table, showing the value according to the cost test, is marked Exhibit 17, and is as follows:

(See next Page.)

534 EXHIBIT No. 17, C. W. P.

C., B. & Q.

Cost.

Ref. 49th. Annual Report, & Poor's Manual.

Cost of Road & Equipment	$302,654,666.85
" " Securities & investments in controlled lines	10,926,110.09
Total Cost	313,580,776.94
Miles owned and controlled (#) 8112.77	
Average cost per mile	38,652.73

(#) Only that % of mileage of controlled lines should be included which would be represented by % of stock owned.

C. B. & Q Lines proper. See Poor's Manual, p. 334.

Miles owned, 5701.26. Cost	302,654,666.85
Average cost per mile	$53,085.57

End of Exhibit No. 17, C. W. P.

535 Q. What do you understand, Mr. Wettling, by the stock and bond test?

A. The stock and bond test is usually understood to be the value—it is a test made by taking the market value of the stocks outstanding and the bonds outstanding on the property.

Q. What did you find to be the amount of stock outstanding of the complainant in 1904?

A. I found the stock outstanding to be, at par value, $110,839,-100.00.

Q. Where did you get the information?

A. I got it from page 23 of the 49th. Annual Report.

Q. Do you know what the actual value of that stock was on or about March 31st, 1904, and during the year previous?

A. I know only so far as the same is reflected in the market quotations of the various Journals that I have mentioned, and also the value placed upon it in the so-called merger.

Q. What quotations do you refer to?

A. I refer to the quotations of the Commercial & Financial Chronicle, Dun's and the Wall Street Journal, as well as others I saw from time to time, but I have not examined them lately closely.

Q. Did the stock of the complainant company at that time, and during the years immediately previous have any quoted value on the market?

A. Yes sir; it has had a quoted value at all times.

Q. What were the quotations during that time?

A. Will you please specify the dates a little closer.

Q. Yes. During 1903 and during 1904, up to March 31st.

A. They run from 180 bid up to 250 asked, and some small
536 sales were made as high as that figure during that time.

Q. Have you the Commercial & Financial Chronicle showing these quotations?

A. Yes sir.

Q. Is this the copy of the Commercial & Financial Chronicle referred to by you? (handing witness the paper referred to.)

A. That is one of them—the issue of January 7th, 1905, showing the course of prices—the table I referred to, showing the course of prices of railroad and miscellaneous stocks for the year 1904.

Q. At what page?

A. At page 96.

That portion of the page referred to is offered in evidence by the respondents, particularly the page named in the evidence of the witness; that part of the page more particularly referred to, and which shows the range of prices referred to by the witness being the line relating to Chicago, Burlington & Quincy stock.

Said line is marked Exhibit 18.

Mr. GREENE: We object to so much of the line as shows quotations subsequent to March 31st as being immaterial.

The line marked Exhibit 18, as above described is as follows:

(See next page.)

537 EXHIBIT No. 18, C. W. P.

Course of Prices of Railroad and Miscellaneous Stocks for the Year 1904.

1904.

Stocks.	January.	Febr'y.	March.	April.	May.	June.
	Low-High	Low-High	Low-High	Low-High	Low-High	Low-High
Railroads: Chic., Burl. & Quincy	181-182	... ...	... ...	... ...	... ...	... ...

End of Exhibit No. 18, C. W. P.

538 Q. What book is it that you have in your hand now, Mr. Wettling?

A. This is a compilation of railroad and industrial securities showing the range of prices from 1899 to 1905, up to June 30th, 1905, compiled by the Commercial & Financial Chronicle. It is in the nature of a review of their monthly and quarterly issues.

Q. Is that a standard authority accepted by the business world as accurate?

A. It is.

Q. Will you hand it to the examiner for identification.

The same is handed to the examiner for identification and is marked on page 138 as Exhibit 19.

Q. Are the quotations of C. B. & Q. stock given in that book for the years 1901-'2-'3 & '4?

A. It merely gives the range of prices—that is to say, the highest price paid during that year and the lowest during that year for each of the years inquired about.

Q. At what page?

A. At page 138. It also gives on the same line the monthly range of prices for the first six months of 1905.

Q. Now, what was the monthly range in prices at that period, the last one you named, 1905, the first six months of 1905.

MR. GREENE: That is objected to as incompetent and immaterial.

A. (See next page)

539

A.—

January	1905	Low 210	High 250
February	"	Low 250	High 250
March	"	Low 230	High 235
April	"	Low 215	High 215
May	"	Low 202	High 202
June	"	Low 205	High 205

Q. What was the range during 1904?
A. 1904 the low price was 181, high 250.
Q. What was the range in 1903?
A. Low 170, high 184.
Q. In 1902?
A. Low 191, high 205.
Q. 1901?
A. Low 138¼, high 199¾.

The ATTORNEY GENERAL: Respondents now offer in evidence the entire line opposite the words Chicago, Burlington & Quincy, and including these words, on page 138 of Exhibit 19, ending with the figures 199¾ in the column which is marked at the top 1901.

Mr. GREENE: That is objected to as incompetent, immaterial, and we specifically object for the reason that the range of prices subsequent to March 31st, 1904 is immaterial.

The line referred to is marked Exhibit 19, and is as follows:
(See next page)

540 EXHIBIT No. 19, C. W. P.

138 *Railroad Stocks in New York—First Six Months* 1905 *and Year's Range* 1899 *to* 1904.

Stocks.	Monthly range in 1905.											
	January.		February.		March.		April.		May.		June.	
	Low-	High	Low-	High	Low-	High	Low-	High	Low-	High	Low-	High
Railroads: Chic., Burl. & Quincy.....	210	250	250	250	230	235	215	215	202	202	205	205

(Continued.)

	Range for full year 1899 to 1904.							
	1904.		1903.		1902.		1901.	
	Low-	High	Low-	High	Low-	High	Low-	High
Do.....	181	250	170	184	191	205	138¼	199¾

End of Exhibit No. 19, C. W. P.

19—215

541 Q. What in your judgment, Mr. Wettling, was the actual value of the Burlington stock in March, 1904, and the year previous?

Mr. GREENE: That is objected to as incompetent, and for the reason that the witness does not claim to know the value of the stock, except as gathered from current reports which he has testified to.

A. 200.

Q. On what do you base your judgment?

Mr. GREENE: That is, as to the value of the stock?

The ATTORNEY GENERAL: Yes.

A. Partially on the market quotations, and partially on the showing made on Page 6 of their 49th Annual Report, the value placed upon it in the merger, and the value placed by the public generally upon stocks that pay such dividends. I find on pages 5 and 6 of the 49th Annual Report that after paying all fixed interest and other charges there remained a balance of $13,326,108.15 of net earnings. After paying a dividend of 7 per cent. on the Burlington stock, not deposited as collateral with the Great Northern,—Northern Pacific Consolidation they were enabled to pay 4 per cent. on the collateral bonds of the Northern Pacific-Great Northern merger on approximately $215,000,000.00, which represented the stock turned over to them at two for one, and there still remained then a surplus of $4,491,537.65, which would have made it possible to have paid an additional dividend on the par value of the stock of about four per cent., or two per cent. on the stock at 200 for 100; in other words, the net earnings of the company for the year, as shown in that
542 annual report would have made it possible to have paid dividends at the rate of 12 per cent. on the par value of the stock, that is, provided that it was all common stock and there were no bonds outstanding which carried a smaller rate of interest than the 12 per cent., and in the eyes of the investing public generally, any stocks that pay 12 per cent. are worth considerably better than 200; they are certainly worth that or more, in my opinion..

Q. Now, what was the total bonded indebtedness of the company as shown by the 49th Annual Report?

A. On page 23, it is shown to have been $156,050,900.00.

Q. What was the value of those bonds in 1903, and March 1904?

A. At least an average of par. A few of the bonds, the three and a half per cent. issue were under par, but the greater proportion of them were above par.

Q. As I understand you, the value of the stocks, added to the value of the bonded indebtedness would represent the value of the entire system under this stock and bond test?

A. It would.

Q. Now, figuring the price of the stock at 180, what would be the total value of the stocks of the company?

A. It would be $199,510,380.00.

Q. That, added to the bonded indebtedness at par would give the total value of the road how much?

A. $355,561,280.00.

Q. Have you examined the bill of complaint?

A. I have.

Q. Do you know the amount of the deductions that are claimed in the bill that should be made from the stock and bond value?

543 A. I know the amounts that they claimed should be deducted in accordance with their bill of complaint. Shall I read them?

Q. Yes.

A. Deductions claimed in bill of complaint at pages 13 and 14, $29,741,610.41; at pages 21 and 22, $10,295,703.23; at page 23, $731,500.00; aggregating $40,768,813.64. There is in addition to this, at pages 28 and 29 a claim made that the value of the second, third and fourth tracks east of the Missouri River are $2,000,000.00. Taking these deductions from the amount last given as the stock and bond value, figuring the stock at 180, it would leave the net value at $312,792,446.36.

Q. What would be the average value then, per mile, of the system?

A. Figuring on the mileage owned and controlled, which is 8112.77, the average value per mile would be $38,555.56, not deducting the value of the second tract, $38,802.00.

Q. Now, what would be the net value of the road according to the stock and bond test, figuring the stock at $200.00 a share, and allowing all the deductions you have named?

A. The net value on that basis would be $334,960,286.36, and the average per mile figuring on the same basis of mileage owned and controlled, $41,288.03.

Q. Have you a table with you showing the figures you have given?

A. I have.

The ATTORNEY GENERAL: On behalf of the respondents we offer in evidence this table, as a part of the testimony of this witness.

Marked Exhibit 20, is as follows: (See next page.)

544 EXHIBIT No. 20, C. W. P.

C. B. & Q.

Stock & Bond Value.

Basis: Stock 1.80; Bonds, par.

Stocks, 110,839,100 at 1.80	$199,510,380.
Bonds, see bill of complaint, p. 32	156,050,900.
	$355,561,280.

Deductions claimed. See Bill of Complaint.

P. 13-14	29,741,610.41	
P. 21-22	10,295,703.23	
P. 23	731,500.00	
		40,768,813.44
		314,792,466.36
P. 28-29, Value of 2nd, 3rd and 4th track East of Mo. River		2,000,000.
Net Value		312,792,446.36
Mileage owned and controlled, 8112.77, Average value per mile		$38,555.56
Not deducting value of 2nd track		38,802.
On basis of 2.00 for stock, bonds par.		
Total Stock		221,678,200.
Bonds		156,050,900.
		377,729,100.
All deductions		42,768,813.64
Net value		334,960,286.36
Average per mile		41,288.03

End of Exhibit No. 20, C. W. P.

545 Q. Mr. Wettling, what value on the stocks per share was it necessary for the Board to fix, provided they figured the total mileage of the system at 8112.77, and the bonds at par, and allowing all the deductions you have allowed, in order to reach a valuation of $38,500.00 per mile

Mr. GREENE: That is objected to as immaterial and irrelevant.

A. $177.88.

Q. Per share?

A. Per share, yes, sir.

Q. Is the average sale price noted in complainant's exhibit 8 the true average price of the stocks during the time referred to in the exhibit?

A. No, sir; it is not.

Q. Have you examined that exhibit?

A. I have.

Q. Why is it not?

A. It could not be the true value, for the reason that the price of the stocks merely is taken and added for the period covered, and averaged by dividing by the number of years, which of course, only gives an average of the price, and not an average of the values.

Q. You mean that that exhibit excludes a number of shares that were actually sold?

A. That is the principal reason for it. The only way to arrive at the true average would be to multiply the number of shares sold by

the price at which they were sold, and then divide the product by the total number of shares, in order to arrive at the average
546 value per share, or the average sale price per share.

Q. Will you give an instance illustrating that point?

A. Well, you might take an instance like this: suppose you sold a thousand shares of stock at $1.00 today, and next month you sold 10,000 shares of the same stock at $2.00. In accordance with the manner of reaching averages as shown in Exhibit 8, it would show an average value of 150, whereas the true average in that case would be about 191.

Q. How do you get that figure, 191 per share on the example given?

A. Why taking the total for 1,000 shares at $1.00—the total for which they were sold,—and the total for which the 10,000 at $2.00 were sold—take the sum of those two totals and divide that sum by 11,000.

Q. Have you made any calculations respecting the true averages of C. B. & Q. stocks during the time covered in complainant's Exhibit 7, using his quotations as correct?

A. I have.

Q. What result did you reach?

A. I find that the average value for the whole period was $181.37, that is the period covered from May 26th, 1900, to August 9th, 1901; I made a computation covering that period nearest the end of the exhibit, which showed sales in excess of the total capitalization of the company, and found that period to cover from April 12th, 1901, to May 31st, 1901, during which time there were sold 1,113,900 shares.

Q. For how much?

A. Figuring the price at the average per day which is as close as it was possible to reach an actual price from data at hand,
547 these shares were sold for $215,833,568.75, or an average price per share of $193.76.

Q. Have you the tables showing that computation and result?

A. I have.

Q. Will you hand them to the examiner?

The computation referred to is handed to the examiner as requested, and is marked Exhibit 21.

The ATTORNEY GENERAL: On behalf of the respondents I now offer in evidence, as a part of the testimony of this witness the computation referred to, which is marked Exhibit 21.

Mr. GREENE: I object to that as being incompetent, irrelevant and immaterial.

Exhibit 21, the computation referred to above is as follows:

(See next page.)

548 EXHIBIT No. 21, C. W. P.

Sales of C., B. & Q. Stock April 12, 1901, *to June* 1, 1901.

Date.	No. of shares sold.	Ave. price for day.	Amount.
1901.			
Apr. 12	79,100	1.89⅜	14,979,562.50
13	34,100	1.90⅜	6,491,787.50
15	33,100	1.89½	6,272,450.
16	167,100	1.91¼	31,957,875.
17	61,400	1.94⅛	11,919,275.
18	54,100	1.93 9-16	10,471,731.25
19	44,100	1.94⅝	8,582,962.50
20	13,800	1.94	2,677,200.
22	52,400	1.94 1-16	10,168,875.
23	78,300	1.95¼	15,327,225.
24	24,900	1.96 3-16	4,885,068.75
25	28,400	1.96 9-16	5,582,375.
26	40,100	1.98 3-16	7,947,318.75
29	26,100	1.99 3-16	5,198,793.75
30	35,800	1.99 5-16	7,135,387.50
May 1	33,800	1.98 15-16	6,724,087.50
2	15,200	1.98 9-16	3,018,150.
3	27,500	1.97⅝	5,434,687.50
4	8,100	1.97¾	1,601,775.
6	18,200	1.97 3-16	3,588,812.50
7	25,300	1.97⅞	4,993,587.50
8	67,300	1.91	12,854,300.
9	23,400	1.85½	4,340,700.
10	22,600	1.89	4,271,400.
13	7,500	1.91¼	1,434,375.
14	8,200	1.90⅛	1,559,025.
15	18,100	1.92 5-16	3,480,856.25
16	6,800	1.95¼	1,326,850.
17	12,900	1.97⅛	2,542,912.50
18	8,600	1.97½	1,696,350.
20	7,800	1.97½	1,540,500.
For'd	1,084,100	....	210,006,256.25

549 PAGE 2, EXHIBIT No. 21, C. W. P.

Sales of C., B. & Q. Stock April 12, 1901, *to June* 1, 1901 (Continued).

Date.	No of shares sold.	Ave. price for day.	Amount.
1901.			
For'd	1,084,100	....	210,606,256.25
May 21	7,500	1.95¾	1,468,125.
22	2,700	1.95¼	528,862.50
23	1,900	1.95⅜	371,212.50
24	8,700	1.95⅛	1,699,762.50
25	1,900	1.95 7-16	371,331.25
27	2,400	1.95¾	469,800.
28	900	1.95⅜	176,062.50
29	700	1.94 7-16	136,106.25
31	3,100	1.95½	606,050.
Total No.	1,113,900	Am't.	$215,833,568.75

Shares sold Apr. 12, '01, to June 1, 1901.
Average price per share, $1.9376 +
Sales June 1 to Aug. 1, 1901, 26,793 shares.
Complainant's Exhibit No. 7, pages 119 to 123, incl.
End of Exhibit No. 21, C. W. P.

550 Q. Now, Mr. Wettling, what would be the average price of the C. B. & Q. stock, figuring it as you have figured it during the entire period covered by Exhibit 7, and taking the figures in said Exhibit as true?

A. I have already answered that question—it is $181.37.

Q. And covering the period from——

A. May 26th, 1900, to August 9th, 1901; the exact period covered in Exhibit 7 of the complainant.

Q. It would be 193 and something?

A. No sir.

Q. Well, what was that?

A. That covers from April 12th, 1901, to May 31st, 1901, both dates inclusive.

Q. That would be what?

A. $193.76.

Q. Now, covering the entire period fixed as shown by Exhibit 7, it would be $181 and something?

A. Yes sir.

Q. Have you the computation that you made with respect to that?

A. I have.

Q. Will you hand that to the examiner.

The computation referred to is handed to the examiner as requested and is marked Exhibit 22.

The ATTORNEY GENERAL: On behalf of the respondents, I now offer in evidence as a part of the testimony of this witness, 551 the computation referred to, which is marked Exhibit 22.

Mr. GREENE: I object to that as being incompetent, irrelevant and immaterial, and not tending to establish the value of the property in controversy.

Exhibit 22, above referred to, is as follows:

(See next page.)

552 EXHIBIT No. 22, C. W. P.

Daily Sales of C., B. & Q. Stocks May 26, 1900, to April 12, 1901, Compl. Ex. No. 7.

1900. Date.	No. of shares sold.	Ave. price for the day.	Amount.
May 28	21,110	126 9-16	2,671,734.37
29	17,470	127⅛	2,229,608.75
31	10,900	128 15-16	1,405,418.75
Jun- 1	25,965	130 5-16	3,383,564.06
2	6,460	131 1-16	846,663.75
4	17,785	130	2,312,050.
5	12,905	129 5-16	1,668,777.81
6	10,195	128¾	1,312,606.25
7	1,550	128¼	199,175.
8	10,840	127⅞	1,386,165.
9	8,220	126⅝	1,040,857.50
11	11,395	127⅛	1,448,589.38
12	7,362	127	934,974.
13	13,060	127 9-16	1,665,966.25
14	6,900	126 13-16	875,006.25
16	17,750	125 3-16	2,222,078.12
18	31,190	123 15-16	3,865,610.63
19	13,257	124 7-16	1,649,667.94
20	11,425	124 5-16	1,420,270.31
21	23,475	124¼	2,916,768.75
22	19,450	124	2,411,800.
23	16,262	122⅝	1,994,127.75
25	35,750	121 9-16	4,345,859.37
26	15,030	122 15-16	1,847,750.62
27	15,280	122 11-16	1,874,665.
28	16,985	122⅛	2,082,785.63
29	9,260	123 15-16	1,147,661.25
30	3,305	123 7-16	407,960.94
Total No.	410,536	Am't.	$51,568,163.43

Shares sold May 26, 1900, to June 30, 1900.
Average price per share, $126 +

553 *Daily Sales of C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901*—Cont'd.

1900. Date.	No. of shares sold.	Ave. price for the day.	Amount.
July 2	13,175	124¼	1,640,287.50
3	10,410	125¼	1,303,852.50
5	10,675	124 9-16	1,329,704.65
6	9,380	125¼	1,177,190.50
7	3,300	124⅛	411,675.
9	5,050	124 13-16	630,303.12
10	14,610	125 7-16	1,832,641.87
11	11,470	125 15-16	1,444,503.12
12	6,695	125⅜	841,896.25
13	7,975	124⅛	994,881.25
14	6,200	124	768,800.
16	14,565	124⅞	1,818,804.06
17	12,565	125 11-16	1,579,263.44
18	7,961	126	1,003,086.
19	3,760	125⅝	471,410.
20	7,110	125 15-16	895,415.62
21	2,645	126 3-16	333,765.93
23	15,535	127¼	1,976,828.75
24	8,777	127 3-16	1,116,324.63
25	7,120	126¼	899,900.00
26	6,410	126¼	809,262.50
27	10,240	126 15-16	1,299,840.
28	3,100	127	393,700.
30	10,494	126	1,322,244.
31	9,960	125⅝	1,251,225.
Total No.	219,182	Am't.	$27,546,805.99

Shares sold July 2, 1900 to July 31, 1900.

554 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901*—Cont'd.

Date.	No of shares sold.	Ave. price for the day.	Amount.
1900.			
Aug. 1	11,820	125 13-16	1,487,103.75
2	2,475	126 3-16	312,314.05
3	11,770	126 11-16	1,491,111.87
4	1,589	127	201,803.
6	4,540	126 15-16	576,296.25
7	2,450	126¼	309,312.50
8	2,950	126⅛	372,068.75
9	2,190	125 13-16	275,529.37
10	5,450	126⅛	687,381.25
11	1,210	126⅛	152,913.75
13	7,560	126 13-16	958,702.50
14	4,900	127¼	623,525.
15	10,940	127 13-16	1,398,268.75
16	8,870	127 9-16	1,131,479.37
17	4,265	127	551,655.
18	1,850	127¼	235,412.50
20	5,850	125⅞	734,906.25
21	2,400	125⅛	301,500.
22	910	125 13-16	114,489.37
23	3,550	125½	445,525.
24	2,625	125⅜	329,109.37
25	2,325	124 15-16	290,479.68
27	6,415	124 9-16	799,068.40
28	5,860	124¼	727,372.50
29	4,735	124 13-16	590,987.13
30	2,820	125 5-16	353,381.25
31	2,010	124⅞	250,998.75
Total No.	124,329	Am't....	$15,702,695.36

Shares sold Aug. 1, 1900, to Aug. 31, 1900.
Average price per share, $126.05 +

555 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901*—Cont'd.

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1900.			
Sept. 4	2,185	125⅛	273,398.12
5	4,700	126	592,200.
6	700	125⅞	88,112.50
7	2,290	125 9-16	287,538.12
8	1,800	125¼	225,450.
10	1,540	125¼	192,885.
11	2,781	125 9-16	349,189.31
12	1,815	125½	227,782.50
13	3,710	125 1-16	463,981.87
14	6,100	124 9-16	759,831.25
15	15,960	123 3-16	1,966,072.50
17	8,925	122¾	1,096,659.34
18	4,425	123¼	545,381.25
19	14,540	122 9-16	1,782,058.75
20	18,685	121 5-16	2,266,723.56
21	11,770	121	1,424,170.
22	5,155	120⅝	621,821.87
24	10,888	120⅞	1,316,087.
25	10,985	121	1,329,185.
26	11,885	121 5-16	1,441,799.06
27	17,330	122¼	2,118,592.50
28	9,000	122 7-16	1,101,937.50
29	6,250	122 5-16	764,453.12
Total No.	173,419	Am't....	$21,235,310.12

Shares sold Sept. 4, 1900, to Sept. 29, 1900.
Average price per share, $123.41 +

556 *Daily Sales C., B. & Q. Stocks May* 26, 1900, *to Apr.* 12, 1901—Cont'd.

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1900.			
Oct. 1	12,160	123 13-16	1,505,560.
2	6,510	123⅞	806,426.25
3	19,065	124 11-16	2,377,167.18
4	21,290	126 5-16	2,689,193.12
5	12,680	126⅜	1,602,335.
6	6,210	126⅜	784,788.75
8	10,920	125 7-16	1,369,777.50
9	7,988	125½	999,498.50
10	4,710	124⅞	588,741.25
11	4,300	124⅛	536,425.
12	7,950	125 7-16	997,228.12
13	4,560	125 13-16	573,705.
15	13,695	126 13-16	1,736,697.18
16	8,990	127 17-80	1,143,640.37
17	4,574	126 15-16	580,612.12
18	5,446	126½	688,919.
19	8,045	127 9-16	1,026,240.31
20	4,950	128¼	634,837.50
22	15,735	129½	2,031,784.37
23	4,730	128 7-16	607,509.37
24	7,685	129 1-16	991,845.31
25	4,014	128 5-16	515,046.37
26	4,550	127 9-16	580,409.37
27	2,050	127 15-16	262,271.87
29	3,260	126 15-16	413,816.25
30	2,350	127¼	299,037.50
31	2,317	127 9-16	295,562.31
Total No.	210,734	Am't	$26,640,074.87

Shares sold Oct. 1st, 1900, to Oct. 31, 1900.
Average price per share, $126.60 +

557 *Daily Sales C., B. & Q. Stocks May* 26, 1900, *to Apr.* 12, 1901—Cont'd.

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1900.			
Nov. 1	1,915	127 5-16	243,803.40
2	3,035	127 7-16	386,772.81
3	4,500	128¼	577,125.
5	7,280	129½	943,760.
6	.....	.....	.....
7	27,950	131	3,661,450.
8	11,725	131¾	1,543,768.75
9	28,950	132 5-16	3,830,446.87
10	9,650	133⅛	1,289,481.25
12	22,560	133¾	3,017,400.
13	11,900	132 13-16	1,580,468.75
14	13,900	132½	1,841,750.
15	21,700	133½	2,896,950.
16	58,800	136	7,996,800.
17	13,800	138	1,876,800.
19	15,000	136 5-16	2,044,687.50
20	16,000	136 11-16	2,187,000.
21	30,200	138⅜	4,178,925.
22	19,200	137⅝	2,642,400.
23	13,200	136 13-16	1,805,825.
24	5,900	136⅝	806,087.50
26	10,500	137¼	1,441,125.
27	11,000	137 3-16	1,509,062.50
28	13,200	136 15-16	1,807,575.
29	.....	.....	.....
30	4,900	137⅛	671,912.50
Total No.	376,565	Am't	$50,781,376.83

Shares sold Nov. 1, 1900 to Nov. 30, 1900.
Average price per share, $134.11 +

558 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901*—Cont'd.

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1900.			
Dec. 1	3,000	136 9-16	409,786.50
3	6,000	136¾	820,500.
4	6,600	135⅞	895,125.00
5	7,000	135 9-16	945,393.75
6	6,900	136 5-16	940,556.25
7	5,300	135¼	716,825.
8	4,200	134 9-16	565,687.50
10	4,100	135 9-16	553,756.25
11	6,550	136 1-16	891,209.37
12	12,495	137 5-16	1,715,719.69
13	8,000	136¾	1,094,000.
14	20,180	137⅜	2,777,272.50
15	8,000	138 9-16	1,108,500.
17	17,100	139 1-16	2,377,968.75
18	13,300	138½	1,840,387.50
19	19,200	138 15-16	2,665,200.
20	38,100	139 9-16	5,317,331.25
21	22,300	140	3,122,000.
22	14,100	141¾	1,998,675.
26	23,200	141 9-16	3,284,250.
27	32,300	141 1-16	4,556,318.75
28	40,100	142 9-16	5,716,756.25
29	11,100	142⅝	1,583,137.50
31	33,200	143	4,747,600.
Total No.	362,325	Am't...	$50,643,857.81

Shares sold Dec 1, 1900, to Dec. 31, 1900.
Average price per share, $138.36 +

559 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901*—Cont'd.

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1901.			
Jan'y 2	20,400	143	2,917,200.
3	31,700	140½	4,441,962.50
4	28,500	140¾	4,011,375.
5	41,500	143⅜	5,960,437.
7	131,400	144 1-16	19,929,812.50
8	51,500	146¼	7,525,437.50
9	26,500	146½	3,872,312.50
10	33,500	144¾	4,849,125.
11	14,800	144 13-16	2,143,125.
12	16,700	146¼	4,112,375.
14	15,800	144 15-16	2,290,032.50
15	17,800	143 5-16	2,550,962.50
16	74,615	145½	10,828,501.87
17	22,900	144 3-16	3,301,893.75
18	20,100	143	2,874,300.
19	10,600	142⅜	1,509,175.
21	24,900	141¼	3,517,125.
22	20,800	142 13-16	2,957,500.
23	19,400	143¼	1,779,050.
24	14,800	142 3-16	2,104,375.
25	7,500	141 15-16	1,064,531.25
26	14,200	143⅛	2,032,375.
28	42,800	144¼	5,173,900.
29	14,300	143⅜	2,050,262.50
30	13,600	144 1-16	1,966,900.
31	17,900	144 9-16	2,587,668.75
Total No.	748,515	Am't....	$107,351,715.12

Shares sold Jan. 2-'01, to Jan. 31-'01.
Average price per share, $143.59 +

560 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901—Cont'd.*

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1901.			
Feb. 1	25,700	145 9-16	3,740,956.25
4	21,000	146 7-16	3,075,187.50
5	20,600	146 13-16	3,024,337.50
6	23,700	147⅛	3,498,712.50
7	17,300	142 3-16	2,459,844.50
8	12,600	141	1,776,600.
9	7,000	141	987,000.
11	8,900	140 13-16	1,253,231.25
13	10,800	140 1-16	1,512,675.
14	11,100	139 1-16	1,549,843.75
15	42,600	141⅛	6,011,925.
16	77,500	143 15-16	11,155,156.25
18	151,700	145⅝	22,091,312.50
19	52,900	145 7-16	7,693,642.75
20	69,800	145½	10,138,450.
21	27,000	144	3,888,000.
23	.....	.....	.....
25	24,000	145¼	3,483,000.
26	21,100	144¼	3,054,225.
27	10,300	144½	1,488,350.
28	9,700	144 3-16	1,398,618.75
Total No.	645,300	Am't....	93,281,068.50

Shares sold Feb. 1-'01, to Feb. 28-'01.
Average price per share, $143.72 +

561 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901—Cont'd.*

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1901.			
Mar. 1	32,700	144½	4,716,975.
2	6,900	144⅝	997,912.50
4	28,200	145¼	4,099,575.
5	77,600	146⅛	11,378,100.
6	95,200	149⅛	14,244,300.
7	41,100	148 13-16	6,116,193.75
8	71,100	149¼	10,602,787.50
9	14,200	149	2,115,800.
11	45,200	150 1-16	6,782,825.
12	55,300	151 3-16	8,360,669.50
13	42,200	152 1-16	6,417,037.50
14	28,000	151¼	4,252,500.
15	107,400	153 13-16	16,519,462.50
16	111,100	158 1-16	17,560,743.75
18	141,000	163	22,983,000.
19	171,800	165⅝	28,475,350.
20	90,900	164¼	14,918,962.50
21	64,200	163⅜	10,488,675.
22	91,100	166¼	15,145,375.
23	13,600	165 13-16	2,354,500.
25	33,100	164½	5,444,950.
26	100	165⅛	16,562.50
27	145,600	168¼	24,497,200.
28	89,700	169⅛	15,215,362.50
29	117,000	172¼	8,463,250.
30	47,900	175⅛	8,388,487.50
Total No.	1,762,200	Am't....	$270,557,057.00

Shares sold Mar. 1-'01 to Mar. 30-'01.
Average price per share, $157.62 +

562 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Apr. 12, 1901*—Cont'd.

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1901.			
Apr. 1	33,500	173½	5,812,250.
2	154,600	176¾	27,267,575.
3	175,200	184½	32,324.400.
4	120,900	184 15-16	22,358,340.75
8	65,500	183 5-16	12,191,187.50
9	131,300	185¾	23,388,975.
10	179,700	189¾	35,030,687.50
11	90,700	189¾	17,210,325.
Total	951,400	Am't	$175,583,740.75

Average price, $183.56+

Recapitulation.

	No. of shares.	Ave. price.	Amount.
1900.			
May 26 to 6-30	410,536	$126.+	$51,568,163.43
July	219,182	125.67+	27,546,805.99
Aug	124,329	126.05+	15,702,695.36
Sep	173,419	123.41+	21,235,310.12
Oct	210,734	126.60+	26,640,074.87
Nov	376,565	134.11+	50,781,376.83
Dec	362,325	138.36+	50,643,857.81
1901.			
Jan'y	748,515	143.59+	1,073,351,715.12
Feb'y	645,300	143.72+	93,281,068.50
Mar	1,762,200	157.62	270,557,057.00
Apr	951,400	183.56	175,583,740.75
Total	5,984,505	....	$1,856,891,865.78

Average price for period, $138.97.

563 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Aug. 9, 1901, Compl't's Ex. No. 7.*

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1901.			
Jun- 1	2,000	196¼	392,500.
3	4,900	196 7-16	962,542.75
4	1,400	196½	275,100.
5	400	196 11-16	78,675.
6	1,200	196¾	235,950.
7	500	196¾	98,312.50
8	100	196¾	19,675.
10	1,500	196¾	294,937.50
11	600	196 15-16	118,162.50
12	300	196 9-16	58,968.75
13	100	196¼	19,687.50
14	900	196 15-16	177,243.75
15	100	196¼	19,650.
17	500	196¼	98,000.
18	300	196¼	59,025.
19	500	196 11-16	98,343.
22	100	196¼	19,662.50
25	900	196½	176,962.50
26	400	196½	78,650.
27	1,600	196 11-16	314,700.
28	100	196¼	19,687.50
29	300	196 15-16	59,081.25
Total No.	18,700	Am't	$3,675,517.75

Shares sold June 1-'01 to June 29-'01.
Average price per share, $196.69+

564 *Daily Sales C., B. & Q. Stocks May 26, 1900, to Aug. 9, 1901—Cont'd.*

Date.	No. of shares sold.	Ave. price for the day.	Amount.
1901.			
July 1	2,100	197¼	414,225.
2	500	197¼	98,975.
3	250	197	49,250.
8	110	196⅝	21,642.50
9	533	196⅝	104,677.87
10	500	196½	98,250.
11	1,300	195⅝	253,987.50
12	800	195	156,000.
13	900	195	175,500.
15	400	193⅞	77,550.
18	400	195½	78,050.
22	100	195	19,500.
25	100	195¾	19,575.
30	100	197	19,760.
Aug. 1 to 9	None	.....	.....
Total	8,093	Am't....	$1,586,882.87

Average price, $196.08 +

Recapitulation.

5-26-1900 to 4-12-1901	5,984,505	138.97+	1,856,891,865.78
4-12-1901 to 5-30-'01	1,113,900	193.76+	215,833,568.75
June '01	18,700	196.69	3,675,517.75
July '01	8,093	196.08+	1,586,882.87
Total	7,125,198		2,077,987,835.15

Average price for whole period, May 26, 1900, to Aug. 9, 1901, $181,37.

End of Exhibit No. 22, C. W. P.

565 Q. What do you understand by the net earnings test?

A. By the net earnings test, I understand the capitalization of a property, of the net earnings of a property at a given per cent.

Q. In the business world, is the net earnings test approved or not?

A. It is generally approved with relation to properties of this nature.

Q. Is the gross earning test ever used?

A. Relatively. It is not to be relied upon as a rule.

Q. Why not?

A. Well, for various reasons, but principally for the reason that taking it in the instance of a railroad, particularly—a certain section of 50 miles of road might earn a very large gross earnings, and another 50 miles with which you would compare it might earn only two thirds or three fourths of the same amount of gross earnings; yet by reason of higher rates, or lower operating expenses, the net earnings on that smaller gross earnings piece would be greater than they were on the other, and would not necessarily establish the value.

Q. What were the total net earnings of the complainant company, as shown by the 49th Annual Report?

A. The total net earnings for the system owned and controlled, as shown by the 49th Annual Report at page 5, for the year ending

June 30th, 1903, were $22,095,906.06, that refers to earnings of operation.

Q. What would be the value of the entire system, capitalizing these net earnings at 4 per cent.?

A. The average net earnings per mile, using the 8112.77
566 mileage, would be $27,023.58, and capitalized on a basis of four per cent., it would give a value of the property of $552,397,651.50, or an average per mile of $68,089.50.

Q. Capitalized at 5 per cent., what would it be?

A. On a basis of 5 per cent., it would be $441,918,121.20, or a per mile value of $54,471.60.

Q. Capitalized at 6 per cent. what would be the value?

A. At 6 per cent., the total value would be $368,265,101.00, or an average per mile of $45,393.00.

Q. Capitalized at 7 per cent., what would the value be?

A. $315,655,800.85, or an average per mile of $38,908.28.

Q. Have you a table showing that computation?

A. I have.

Q. Will you hand it to the examiner?

The table referred to is handed to the examiner, as requested, and is marked Exhibit 23.

The ATTORNEY GENERAL: On behalf of the respondents I offer in evidence this table referred to, as a part of the examination of this witness.

Mr. GREENE: I object to that as incompetent, irrelevant and immaterial, and not tending to establish the value of the property in controversy.

Exhibit 23, the table referred to is as follows:

(See next page.)

567 EXHIBIT No. 23, C. W. P.

C. B. & Q.

Net Earnings.

8112.77 miles, owned and controlled, System.
49th Annual Report, p. 5.

Net Earnings for the system, year ending June 30—'03	2,723.58
Ave. Net Earnings per mile	2,723.58

This represents a capitalization on

Basis.	Total value.	Val. per mile.
4%	552,397,651.50	68,089.50
5%	441,918,121.20	54,471.60
6%	368,265,101.00	45,393.00
7%	315,655,800.85	38,908.28

End of Exhibit No. 23, C. W. P.

568 Q. Explain, Mr. Wettling, why you think the road, capitalized at 7 per cent. on its net earnings is worth $38,908.28 per mile?

A. I think it is worth that because the investing public generally would be willing to pay that much for it. As a matter of fact experience shows that they would be willing to pay for it on a much smaller earning basis than that.

Q. Will you examine the complainant's exhibit 7 in evidence, being a statement of the net earnings of the C. B. & Q., the complainant company in Nebraska for the year 1903?

A. I have. It is not for the year 1903, but it is for the year ending June 30th, 1903.

Q. What is the mileage of the company in the state?

A. The mileage of the company in the state is given by them as 2611.23.

Q. And what are the net earnings as shown by the Exhibit you refer to?

A. $6,771,921.24, or an average per mile of $2593.39.

Q. That earning per mile capitalized at 4 per cent. would give a valuation per mile of what?

A. Capitalized at 4 per cent., those net earnings would reflect a valuation per mile of the road in Nebraska of $64,834.75, or a total valuation of the lines in Nebraska of $169,298.031.00.

Q. What do you say was the net earnings—where did you find it?

A. It is not in that, (indicating 49th Annual Report). It is in one of the affidavits on file with the state board; and Mr. Pollard has it as an exhibit in his testimony.

Q. What would be the value capitalized at 5 per cent?

A. $135,438,424.80, or an average per mile of $51,867.80.

569 Q. Capitalized at 6 per cent., what would be the value?

A. It would be $112,865,354.00 total; or an average per mile of $43,223.16.

Q. Have you a table showing the computation you have just given?

A. I have.

Q. Will you hand it to the examiner?

A. I will.

The computation referred to is handed to the Examiner, as requested, and is marked Exhibit 24.

The ATTORNEY GENERAL: On behalf of the respondents I offer in evidence as a part of the testimony of this witness the Exhibit referred to, which has just been marked No. 24.

Mr. GREENE: I object to this as being incompetent, irrelevant and immaterial, and in no way tending to establish the value of the property in controversy.

Exhibit 24, the table referred to is as follows:

(See next page.)

570 EXHIBIT No. 24, C. W. P.

C. B. & Q.

Net Earnings.

2611.23 miles Nebraska.
See respondents' Exhibit No. 7.

Net Earnings in Nebraska for year ending June 30 1903	$6,771,921.24
Average net earnings per mile	2,593.39

This would represent a capitalization on

Basis of	Total.	Per mile.
4%	$169,298,031.00	$64,834.75
5%	135,438,424.80	51,867.80
6%	112,865,354.00	43,223.16

End of Exhibit No. 24, C. W. P.

571 Q. Have you read the testimony of Col. Edward F. Browne, who testified in this case as an expert for the Complainant?

A. Yes, sir.

Q. Do you recall his testimony with regard to the distribution of stock to mileage in Nebraska?

A. I do.

Q. In your judgment, is it fair to distribute the aggregate value of a system to a certain part of the mileage of that system in the proportion that the gross earnings of that part of the mileage sustain to the gross earnings of the entire system?

A. No, sir.

Q. Why not?

A. In the first place, the stock is not divisible in that manner, as one share of stock owns its proportion of the entire system, as against which that stock is issued, and for the reason explained in the answer to the question regarding gross earnings heretofore given, namely: that the gross earnings are not to be relied upon when taking segregated parts of a system or road.

Q. Mr. Wettling, what in your judgment was the complainant's property in Nebraska, exclusive of that locally assessed in the state actually worth on March 31st, 1904?

Mr. GREENE: That is objected to because it does not appear that the witness is qualified to testify in this respect, and that the testimony is incompetent and irrelevant.

A. In my judgment, the property in Nebraska referred to is worth about $115,000,000.00, or about $44,000.00 per mile.

572 Cross-examination.

By Mr. CHAS. J. GREENE:

Q. I believe at the beginning of your testimony you stated that you knew nothing specially about the physical property of the company?

A. No, sir; I do not.

Q. So that your opinion and testimony is not given with reference to any knowledge of the physical property of the company, only as they are set forth in the statements and reports to which you have referred?

A. Your question was as to special knowledge. I am acquainted with it in a general way only—only in a general way—no special knowledge, no.

Q. Of course you are familiar with the territory in which its lines are located?

A. Yes, sir.

Q. And the general character of the property, and the operation of it?

A. Yes, sir.

Q. As you have passed over the line?

A. Yes, sir.

Q. You regard the property as an indivisible whole, do you not?

A. Yes, sir; I do.

Q. Just as much as the stock is an indivisible property?

A. Yes, sir.

Q. So far as your estimate of the value of the entire property as based upon the stock and bond proposition, you deal with

573 it as a unit?

A. Yes, sir.

Q. And these stocks and bonds represent not only the railroad, but all other properties owned and controlled by the Company?

A. Necessarily, yes, sir.

Q. So far as the value of the stock is concerned, that is generally noted in the markets, where it has a market quotation?

A. That is about the only way of arriving at the opinion of the public as to its value—yes, sir.

Q. From one day to another, or one week, or one year, to another, you get an idea of how the public estimates the value of the road, by the quotations of the market?

A. Yes, sir, and sales, of course, market quotations and sales, necessarily.

Q. Now, do you remember when the merger, the so-called merger, between the Burlington properties and the Great Northern and Northern Pacific occurred?

A. Yes, sir; it was in 1901.

Q. Now, prior to that, the stocks were quite active, were they not, the stocks of the C. B. & Q.

A. They had been, yes; for a long period.

Q. The merger was worked out pursuant to some plan that had been undertaken some time before it occurred?

A. That is the general impression, yes, sir.

Q. You would not say, would you, as an observed of values, and familiar with stock movements, that during the period preceding the merger and while the contest was on that the market quotations of Burlington stock reflected the true value of the property?

574 A. Well, during the period when the fight was on for possession of the stock, it would not necessarily reflect the true value.

Q. No; it would not.

A. It would not, no, sir.

Q. Sometimes in their movements in the stock market it carries stock way beyond its value?

A. That has occurred in a number of instances.

Q. A quite phenomenol occurrence was that of the Northern Pacific, wasn't it?

A. Yes, sir.

Q. Now, until that movement began the average value of the Burlington stock for years before, the highest value had not exceeded 150 had it?

Q. Well, it depends, Mr. Greene, upon just when this merger began to be worked out.

Q. Well, I will ask you, as long as your testimony is based upon your knowledge and impressions, and speaking with reference to those impressions, what would the fact be?

A. Well, my impression would be that about 150 would be the limit.

Q. And it had been down as low as 50, had it not?

A. Yes, sir; during the hard times it had been, yes, sir.

Q. For a great many years it ran from 100 to 130 and 135?

A. Yes, sir.

Q. Now, after the merger occurred—that was in 1901—the stock was withdrawn from the market?

A. Pretty much; most of it was withdrawn from the market, yes, sir.

Q. Do you know whether or not there were a few individual owners of stock who refused to join in and surrender their stock?

575 A. That is the understanding, yes, sir.

Q. And who held the stock for purposes of their own?

A. Yes, sir.

Q. But occasionally since the merger some of this stock would be sold?

A. Yes, sir; a little bit has been sold since then.

Q. And it is that stock and the sale of that class of stock that has been quoted in the markets now and then?

A. Certainly.

Q. But the special circumstances of the transaction, nobody knows but the parties to it, I suppose?

A. The reason for selling, you mean?

Q. Yes.

A. Oh, no; probably not.

Q. Or the reason for buying?

A. No, sir.

Q. You would not regard these transactions as strictly commercial, would you?

A. Well, the sales since the merger—no; they would not necessarily reflect the value of the road, if that is what you mean.

Q. That is what I mean—or the value of the stock.

A. The sales have been so small that they could not.

Q. There has only been relatively speaking a few shares bought and sold since the merger.

A. Only a small proportion, yes, sir.

Q. Do you remember how many shares of stock there are of the Burlington outstanding?

A. 110,891.

576 Q. About 110,000 shares?

A. Yes; 110,800, something like that.

Q. So, as an investor, you would pay very little regard to the sale of these few shares of stock in determining the value of the property?

A. Under those conditions, the selling price of such a small proportion of the stock would not give, in my opinion, reliable information as to the value.

Q. Now, the Burlington property, by some process, was identified with the properties of the Northern Pacific and Great Northern and bonds—security bonds—issued?

A. Yes sir.

Q. And these bonds have taken the place of stock in the market?

A. Yes sir.

Q. I call your attention to the 49th Annual Report, page 6.

A. Yes sir.

Q. To the first paragraph on the top of the page—what do you understand that to mean?

A. As to the bonds?

Q. Yes.

A. I understand that issue of bonds is one that there is the guarantee, of course, of the Northern Pacific and Great Northern roads behind it, but specifically only covering the stock of the C. B. & Q. Railroad.

Q. So that the bonds are secured, not only by the C. B. & Q. but by the Great Northern and Northern Pacific companies, a guarantee of theirs?

A. A guarantee of theirs, not covering any specific stock of theirs.

577 Q. Now, these bonds are based upon the stock of the C. B. & Q. and guaranteed by the Great Northern and Northern Pacific companies?

A. That is my understanding of it, yes sir.

Q. In your calculations, you used the total mileage of properties owned and controlled by the Burlington company as the divisor did you not?

A. I do, in nearly all the calculations I have made.

Q. You get at the total value of all the property of the company by taking the aggregate value of the stocks and bonds?

A. Yes; all of the property I had. You probably understand, Mr. Greene, from an explanation I made early in the testimony here that I used this divisor you speak of, of 8112, not because I think it is right—I think the divisor should be smaller,—but because it was impossible to arrive at the exact figure from the evidence at hand.

Q. From your examination of the records before the state board, did you ascertain whether they used the 8000 divisor?

A. I had no reference to what their figures were, or how they went about it. I had no consultation with them at all. When I say I had no reference to their records I mean I had no reference to the records they made—I had reference to the records deposited by the Burlington there, but I had no reference to the record of calculations that they have made afterwards.

Q. Then, in the stock and bond test, the value of the railroad properties of the company in Nebraska would be represented by the average value of one mile of the whole system, multiplied by the number of miles in the state?

578 A. Yes sir.

Q. And that value in the state would not only include the railroad proper, but all its other properties in the state?

A. No sir; because we deduct all the exceptions that are claimed as against that.

Q. In the state?

A. I figured that on the net, after these deductions are made, you understand.

Q. That is one system you figured?

A. For the whole road, and necessarily that reflects on the state when I use that average value per mile.

Q. And in getting at the other properties, you take the statements in the bill of complaint as true?

A. I do, sir; they practically agree with the statements in the hands of the Board of Equalization.

Q. Now, if the calculation were made without these deductions, it would show that the board had fixed a different total value than you have fixed, would it not?

A. Yes; necessarily.

Q. And that difference of that total value would be accounted for in the different valuations put upon the stock of the company?

A. Yes; it would probably result in that manner of calculation. It might be arrived at in two or three different ways.

Q. But as a matter of fact, you understand that there has been concontroversy over the value of the bonds?

A. No sir.

Q. So that the only difference would be as to the value of the stock?

579 A. Yes; if they used the stock and bond basis for figuring it would necessarily be reflected in the difference in the value of the stock, if they didn't make deduction before taking the totals.

Q. Now, with reference to the net earnings test; you have based your calculations upon the net earnings reported as having accrued in the state of Nebraska?

A. I did it both as to Nebraska and as to the entire road.

Q. Now, so far as the calculation being based upon the net earnings of the entire road, you simply averaged them by the mile on a mileage basis?

A. Yes; yes.

Q. Of the total system?

A. The total mileage, taking the total mileage owned and controlled. In that case the divisor is proper, because of the fact that that represents the mileage, regardless of whether they owned it or not.

Q. Now, when you came to separate your earnings in Nebraska, from the earnings of the entire system, you had to do it upon some definite basis, didn't you?

A. Well, I made no such separation, you understand; the separation was made by the C. B. & Q. in their tables.

Q. Now, in their tables, they only show the earnings of the B. & M. west of the river?

A. There is one table that shows the earnings west of the river for the year 1903; then there is another table which shows the earnings in Nebraska proper.

Q. How many miles are there of the Burlington west of the River?

A. 4,100, approximately.

580 Q. And in Nebraska there are approximately 2600?

A. 2600, yes sir.

Q. Then your calculation, so far as the value of the Nebraska property, based upon the net earnings, is made with reference to the reported earnings in Nebraska by the Company?

A. Yes sir.

Q. Did you take into account in the calculations which you have testified to any arbitrary or fictitious earnings which were credited to the state by the company in its book-keeping?

A. There were none such shown in the schedule, or figures given, and I did not use any.

Witness excused.

At this time an adjournment was taken until Friday, November 17, 1905, at 2 o'clock P. M.

FRIDAY, *November* 17, 1905—2 o'clock p. m.

Parties met pursuant to adjournment and the following proceedings were had:

GEORGE D. BENNETT, a witness on the part of the respondents having been called heretofore, duly sworn and examined, is at this time re-called for further examination on the part of the respondents. Examined in chief by Attorney General Norris Brown, testified as follows:

Q. You have been sworn in this case, have you?
581 A. Yes sir.
Q. You are secretary of the State Board of Equalization and Assessment—I believe you said you were in 1904?
A. Yes sir.
Q. Do you recall whether or not the county assessors of the several counties of the state made returns to you in the way of the abstract required by law of the property assessed by them in the several counties?
A. Yes sir.
Q. Did those abstracts come to the State Board?
A. Yes sir.
Q. Have you them with you?
A. Yes sir.
Q. Will you give them to the Examiner?

(The papers referred to are handed to the Examiner and are marked Exhibits 25 to 113 inclusive.)

Q. Those are the abstracts you referred to?
A. Yes sir.
Q. Were they before the State Board of Equalization and Assessment while they had under consideration the values of property other than railroad properties?
A. They were.
Q. When they were sitting as a Board of Equalization?
A. Yes sir.

The ATTORNEY GENERAL: The respondents now offer in evidence the abstracts above referred to, being marked Exhibits 25 to 113 inclusive.

Witness Excused.

582 At this time further proceedings were adjourned to a time to be later agreed upon between the parties.

OMAHA, NEBRASKA, *December* 26, 1905.

By agreement parties met at room 711, New York Life Building, at 3 o'clock P. M., and proceedings were as follows:

It is admitted that exhibit 114 is a letter written by Charles F. Manderson, Attorney for the Burlington & Missouri River Railroad Company west of the Missouri River, to R. D. Pollard, Tax Agent of said Company, and by said Tax Agent presented to the State Board of Equalization and Assessment, on or about April 30, 1904.

Counsel for complainant objects to this as being irrelevant and immaterial.

Exhibit 114 above referred to is as follows:

(2861.)

Burlington and Missouri River Railroad in Nebraska.

Burlington Route.

Chicago, Burlington & Quincy Railway Company, Lessee.

Law Department.

Charles F. Manderson,
General Solicitor, Omaha, Neb.

J. W. Deweese,
Solicitor, Lincoln, Neb.

OMAHA, NEB., *April 30th*, 1904.

Mr. R. D. Pollard, Tax Agent, Omaha, Neb.

DEAR SIR:—One of the questions that will come up before the State Board of Equalization in its assessment of Railroad
583 property, is "by what method the assessment shall be made, where different railroad corporations are being operated under lease by another corporation."

The Burlington System, so called, in the State of Nebraska, is made up, as you are well aware, of different corporations, and each one of these railroad companies makes a separate and distinct return as required by law. While it is true that the taxes which are levied in accordance with assessments that may be made, are paid by the lessee company, the C. B. & Q. Ry. Co., it is also true that every one of the different railroad corporations maintain a separate corporate existence and are bound to do so under the law of their creation. If they continue to own the franchise and the physical property they have the right to exercise the power of eminent domain and must continue to exist, or their franchise could be forfeited by proper proceedings by the State. Their properties consisting of stations, depots, shops, right of way, track etc., vary in value, acording as they may be located, or the character of their construction. The physical property owned by any one of these corporations may not have one fourth the value of another of the corporations. This difference is as I suggested, because of location or the character of the construction, but to say that all the railroads belonging to these different corporations shall be charged at the same valuation per mile would be manifestly unfair and unequal to the different taxing municipalities through which they pass. The law requires that the valuation per mile shall be determined by dividing the whole valuation by
584 the number of miles of the main track of *each* road and line. (See section 89 of the Public Revenue Act of 1903.) It is evident that it was the intention of the legislature that each road or line should be separately assessed and this is unquestionably an equitable method. It is the course that has always been followed

and was it the intention of the legislature that a different method should now be used the law would have said so in definite and emphatic language. For nearly thirty years this method has obtained and any other course would be in the highest degree objectionable.

I think that when you present this matter to the State Board of Equalization it will see quickly that any new method of assessment not warranted by the state law would be detrimental and injurious to many sections of the state.

Truly Yours,

(Signed) CHARLES F. MANDERSON.

C. F. M.—M.

End of Exhibit 114.

It is stipulated by and between the parties hereto that the testimony taken by either party in the case of Union Pacific Railroad Company *vs.* Robert O. Fink, as County Treasurer of Douglas County, *et al.*, No. 79, Docket W, in this Court, shall be received and considered as a part of the record in the case of the Chicago, Burlington & Quincy Railway Company *vs.* F. C. Babcock, as County Treasurer, *et al.*, No. 80, Docket W, and that the same may be read and considered with the other testimony in the case the same as if it had been produced therein by the parties thereto.

584½ DISTRICT OF NEBRASKA, *ss:*

I, Charles W. Pearsall, Examiner, do hereby certify that the foregoing testimony was taken before me in the above entitled case at the times and places in the record thereof indicated; that before testifying each of the several witnesses was by me severally duly sworn to tell the truth, the whole truth and nothing but the truth; that said testimony was taken in shorthand by myself, and by myself transcribed as hereinbefore set forth, and that by consent of parties the signature of each of said witnesses to their respective depositions as so extended was waived.

CHARLES W. PEARSALL, *Examiner.*

Endorsed: Filed Dec. 27, 1905. Geo. H. Thummel, Clerk.

585 United States Circuit Court, District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
F. C. BABCOCK, Treasurer of Adams County, Nebraska, *et al.*

UNITED STATES OF AMERICA, *District of Nebraska, ss:*

I, Geo. H. Thummel, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify that the foregoing Record marked Volume One (1) is a part of the Record of

said cause and is the Volume referred to as Volume One (1) in my said Certificate found on page 2130 attached to Volume Four (4).

Witness my hand and the Seal of said Court at Omaha in said District this 22nd day of February, A. D. 1906.

[Seal United States Circuit Court, District of Nebraska.]

GEO. H. THUMMEL, *Clerk.*

586 Thereupon afterwards, to-wit:—On the 27th day of December, 1905, Exhibit No. 1, being 49th Annual Report of the Board of Directors of the C. B. & Q. R. R. Co., to the stockholders was filed in said case, which said Exhibit No. 1 is in words and figures following, to-wit:—

587 Ex. 1, C. W. P.

Forty-ninth Annual Report of the Board of Directors of the Chicago, Burlington & Quincy Railroad Company to the Stockholders, for the Year Ending June 30, 1903.

588 Directors and Officers of the Chicago, Burlington & Quincy Railroad Company.

Directors:

CHARLES E. PERKINS	Burlington, Iowa.
EDWARD T. NICHOLS	New York.
JAMES J. HILL	St. Paul, Minn.
WILLIAM P. CLOUGH	New York.
ROBERT BACON	New York.
E. H. HARRIMAN	New York.
JACOB H. SCHIFF	New York.
GEO. J. GOULD	New York.
H. McK. TWOMBLY	New York.
NORMAN B. REAM	New York.
GEORGE B. HARRIS	Chicago, Ill.

Officers:

GEORGE B. HARRIS	President.
THOMAS S. HOWLAND	Vice-President, Treasurer and Secretary.
GEORGE H. EARL	Assistant Secretary.
ARTHUR G. STANWOOD	Assistant Treasurer, Boston.
GEORGE L. BRIGGS	Transfer Agent, Boston.
NATIONAL BANK OF COMMERCE IN NEW YORK	Transfer Agent, New York.

589 Directors and Officers of the Chicago, Burlington & Quincy Railway Co., Lessee.

Directors:

James J. Hill	St. Paul, Minn.
James Stillman	New York.
William P. Clough	New York.
E. H. Harriman	New York.
John S. Kennedy	New York.
George W. Perkins	New York.
William H. McIntyre	New York.
Mortimer L. Schiff	New York.
Charles E. Perkins	Burlington, Iowa.
George B. Harris	Chicago, Ill.
Darius Miller	Chicago, Ill.

Executive Committee:

George W. Perkins.
William P. Clough.
Mortimer L. Schiff.
James J. Hill.
E. H. Harriman.
President, *ex-officio*.

Officers:

George B. Harris	President.
Darius Miller	First Vice-President.
Howard Elliott	Second Vice-President.
Joseph W. Blythe	General Counsel.
Chester M. Dawes	General Solicitor for Roads East of the Missouri River.
Charles F. Manderson	General Solicitor for Roads West of the Missouri River.
Oliver M. Spencer	General Solicitor for Missouri Lines.
Thomas S. Howland	Treasurer and Assistant Secretary.
Harry E. Jarvis	Secretary.
George H. Earl	Assistant Secretary.
Charles I. Sturgis	General Auditor.
Arthur G. Stanwood	Assistant Treasurer, Boston.

590 *Forty-ninth Annual Report.*

Chicago, *October* 1, 1903.

To the Stockholders of the Chicago, Burlington & Quincy Railroad Company:

The Railroads and properties of your company were leased, taking effect October 1, 1901, to the Chicago, Burlington & Quincy Railway Company, and have since that date been operated by that Company. For purposes of comparing results of operation with previous years, this report is made, as heretofore, by the Railroad Company.

Earnings and Expenses.

The Gross Earnings from operation, including all leased and controlled roads, for the year ended June 30, 1903, have been:

From Freight	$42,782,405.94	
From Passengers	14,136,281.18	
From Mail, Exp. and Miscellaneous	5,719,691.70	
		$62,638,378.82
The Expenses have been:		
Operating Expenses	$38,763,996.67	
Taxes	1,778,476.09	
		40,542,472.76
Income from Operation		$22,095,906.06
Add for—		
Income on Securities owned and other Income and Interest	$268,331.72	
Net Receipts of Land Departments	78,208.26	
		346,539.98
Total Income		$22,442,446.04
Charges have been:		
Interest on Bonds	$7,442,941.24	
Rentals	192,173.95	
Sinking Funds	721,757.70	
Other Charges	759,465.00	
		9,116,337.89
Balance		$13,326,108.15

591 During the year the Chicago, Burlington & Quincy Railway Company has paid, as rental, dividends at the rate of seven per cent. per annum on the stock of the Chicago, Burlington & Quincy Railroad Company. The dividends upon the stock of the Railroad Company deposited as collateral security for the Northern Pacific-Great Northern Railway Companies Joint C. B. & Q. Collateral four per cent. bonds were, for the convenience of all concerned, applied directly to the payment of the interest on these bonds. The details are shown below:

Balance		$13,326,108.15
Dividends on stock of the Chicago, Burlington, & Quincy Railroad Company not deposited as collateral for Northern Pacific-Great Northern Joint C. B. & Q. Collateral Bonds:		
October 1, 1902, 1¾ per cent.	$56,801.50	
January 1, 1903, 1¾ per cent.	57,079.75	

April 1, 1903, 1¾ per cent.....	57,078.00	
July 1, 1903, 1¾ per cent.....	56,859.25	
	$227,818.50	
Interest for the year on Northern Pacific-Great Northern Joint C. B. & Q. Collateral Bonds at 4 per cent.	8,606,752.00	
		8,834,570.50
Surplus		$4,491,537.65

592 1902-3 compared with 1901-2.

Gross Earnings from Operating in 1902-3.....	$62,638,378.82
In 1901-2	53,795,245.47
Increase in 1902-3.....	$8,843,133.35
Operating Expenses and Taxes in 1902-3.....	$40,542,472.76
In 1901-2	35,682,875.53
Increase in 1902-3.....	$4,859,597.23
Net Earnings from Operating 1902-3.....	$22,095,906.06
In 1901-2	18,112,369.94
Increase in 1902-3.....	$3,983,536.12
Percentage of Operating Expenses, including Taxes, to Gross Earnings, 1902-3.....	64.72
In 1901-2	66.33
Decrease in 1902-3.....	1.61
Total Number Passengers carried one mile 1902-3, exclusive of free mileage.....	678,462,129
In 1901-2	600,136,909
Increase in 1902-3.....	78,325,220
Gross Earnings from Passengers 1902-3.....	$14,136,281.18
In 1901-2	12,857,266.86
Increase in 1902-3.....	$1,279,014.32

Gross Earnings per Passenger per mile 1902-3		$2.08
In 1901-2		2.12
Decrease in 1902-3	$	.04
593 Miles run by Passenger Trains, 1902-3		15,311,454
In 1901-2		15,299,531
Increase in 1902-3		11,923
Miles run by Passenger Trains per mile of Road Operated in 1902-3		1,749
In 1901-2		1,859
Decrease in 1902-3		110
Total number of tons of Revenue Freight carried one mile in 1902-3		4,931,185,014
In 1901-2		4,001,631,245
Increase in 1902-3		929,553,769
Gross Earnings from Freight, 1902-3		$42,782,405.94
In 1901-2		36,072,079.68
Increase in 1902-3		$6,710,326.26
Gross Earnings per ton per mile, 1902-3		0.868
In 1901-2		0.896
Decrease in 1902-3		0.028
Miles run by Freight Trains in 1902-3		18,545,775
In 1901-2		18,324,905
Increase in 1902-3		220,870
Miles run by Freight Trains per mile of Road operated in 1902-3		2,119
In 1901-2		2,228
Decrease in 1902-3		109

594

Capital Stock.

The Capital Stock of the Chicago, Burlington & Quincy Railroad Company, at the date of the last Report was	$110,800,600.00
Issued during the year in exchange for C. B. & Q. Convertible Bonds of 1903	38,500.00
Aggregate of Capital Stock on June 30, 1903	$110,839,100.00

Funded Debt.

The Funded Debt of the Chicago, Burlington & Quincy Railroad Company at the date of the last Report was				$152,072,400.00
The additions during the year were as follows:				
C. B. & Q. Illinois Division 3½ per cent Bonds of 1949.				
Sold	$1,272,000.00			
Issued in exchange for Quincy Railroad Bridge Co. stock	3,242,000.00			
		$4,514,000.00		
B. & M. R. R. R. in Neb. Consolidated Mortgage 6 per cent Bonds of 1918 sold	.....	26,000.00		
			$4,540,000.00	
The reductions during the year were as follows:				
Purchased for Sinking Funds and Canceled:				
C. B. & Q. Iowa Division 4 per cent Bonds of 1919	$168,000.00			
Amounts carried forward	$168,000.00	.....	$4,540,000.00	$152,072,400.00
595				
Amounts brought forward	$168,000.00	.....	$4,540,000.00	$152,072,400.00
C. B. & Q. Iowa Division 5 per cent Bonds of 1919	61,000.00			
C. B. & Q. Nebraska Extension 4 per cent Bonds of 1927	273,000.00			
		$502,000.00		
Converted into Stock:				
C. B. & Q. Convertible 5 per cent Bands of 1903	.....	38,500.00		

Purchased and Canceled:				
Tarkio Valley 7 per cent Bonds of 1920	11,000.00			
Nodaway Valley 7 per cent Bonds of 1920	10,000.00			
		21,000.00		
			561,500.00	
				3,978,500.00

Total Funded Debt of the C. B. & Q. R. R. Co. on June 30, 1903.. $156,050,900.00

For detailed statements of which see pages 26 to 36.

596 *Length of Road.*

The total mileage operated on June 30, 1903, was:

Owned, or controlled through ownership of securities.....				8,112.77
Leased from other roads:				
Chicago & Alton Ry. Co.				
East Louisiana to Louisiana.....	Illinois	1.52		
East Louisiana to Louisiana.....	Missouri	.55		
			2.07	
At Louisiana	Missouri		.34	
Pennsylvania Company.				
At Chicago	Illinois		1.22	
Chicago & North-Western Ry. Co.				
East Clinton to Clinton.....	Illinois	.77		
East Clinton to Clinton.....	Iowa	.21		
			.98	
C. C. C. & St. L. Ry. Co.				
East Alton to East St. Louis.....	Illinois		19.05	
Terminal Railroad Association.				
East St. Louis to St. Louis.....	Illinois	1.51		
East St. Louis to St. Louis.....	Missouri	1.69		
			3.20	
North Market Street, St. Louis, to U. D.	Missouri		3.83	
Quincy R. R. Bridge Co.				
West Quincy to Quincy.....	Illinois	1.30		
West Quincy to Quincy.....	Missouri	.13		
			1.43	
Illinois Central R. R. Co.				
Portage Curve to East Dubuque.....	Illinois		12.87	
Dunleith & Dubuque Bridge Co.				
East Dubuque to Dubuque.....	Illinois	.17		
East Dubuque to Dubuque.....	Iowa	.49		
			.66	
Davenport, Rock Island & Northwestern Ry. Co.				
Rock Island to Clinton.....	Illinois	1.03		
Rock Island to Clinton.....	Iowa	36.99		
			38.02	
Wabash R. R. Co.				
Chapin to Jacksonville.....	Illinois		10.00	
Moulton to Bloomfield	Iowa		14.11	
At Hannibal	Missouri		.44	
Missouri, Kansas & Texas Ry. Co.				
At Hannibal	Missouri		.30	
Carried forward			108.52	8,112.77

597

Brought forward			108.52	8,112.77
Chicago, Rock Island & Pacific Ry. Co.				
Burlington to Mediapolis	Iowa		13.77	
At Carson	Iowa		.23	
Keokuk & Hamilton Br. Co.				
At Keokuk	Iowa		.03	
Union Depot Co.				
At St. Paul	Minn.		.53	
Great Northern Ry. Line.				
St. Paul to Minneapolis	Minn.		11.65	
Minneapolis Union Ry. Co.				
At Minneapolis	Minn.		2.21	
Winona Bridge Ry. Co.				
East Winona to Winona	Minn.	.45		
East Winona to Winona	Wis.	.53		
			.98	
Quincy, Omaha & Kansas City R. R. Co.				
At Milan	Missouri		.52	
Atchison & Eastern Bridge Co.				
Winthrop to Atchison	Missouri		.39	
Atchison U. D. & R. R. Co.				
At Atchison	Kansas		.10	
Leavenworth Ter. Ry. & Br. Co.				
Stillings to Leavenworth	Missouri	1.01		
Stillings to Leavenworth	Kansas	.72		
			1.73	
Kansas City Union Depot Co.				
At Kansas City	Missouri		.20	
St. Joseph & Grand Island Ry. Co.				
K. C. & O. Jct. to Endicott	Nebraska		12.00	
Fairfield to Alma Jct.	Nebraska		2.65	
Union Pacific R. R. Co.				
U. P. Transfer to Omaha	Iowa	2.33		
U. P. Transfer to Omaha	Nebraska	.46		
			2.79	
At Stromsburg	Nebraska		.22	
South Omaha to Pappio	Nebraska		4.54	
Sterling to Union	Colorado		23.67	
At South Omaha	Nebraska		.41	
Colorado & Southern Ry. Co.				
Utah Jct. to Burns Jct.	Colorado		11.30	
Carried forward			198.44	8,112.77

598

Brought forward			198.44	8,112.77
Northern Pacific Ry. Co.				
Huntley to Billings	Montana		12.62	
				211.06
Total miles operated				8,323.83

The above mileage is located in

Illinois	1,454.65
Wisconsin	223.10
Minnesota	38.45
Iowa	1,425.48
Missouri	1,031.99
Nebraska	2,631.38
Kansas	260.44
Colorado	429.35
Montana	199.90
South Dakota	277.56
Wyoming	351.53
	8,323.83

NOTE.—For details of the above mileage, see pages 41 to 44.

Average number of miles operated during the year, 8,318.64.
In addition to the above, there was, on June 30, 1903:
Miles of second track 479.54

599 *Construction and Equipment.*

Expenditures.

Expenditures for Construction during the year ended June 30, 1903, on the Chicago, Burlington & Quincy Railroad and Branches in Illinois and Iowa were as follows:

Reducing Grades in Iowa, including Land and New Second Track	$1,506,789.31	
Tracey, Iowa, Extension	101,822.02	
Savanna, Ill., addition to yards	19,947.68	
Daytons Bluff, Minn., addition to yards	39,920.19	
Grand Crossing, Wis., andition to yards	43,505.28	
Addition to facilities at Galesburg, Ill.	65,232.79	
Addition to facilities at Creston, Iowa	20,631.85	
Chicago, Ill., land for additional yard facilities	56,062.19	
East St. Louis, Ill., land for additional yard facilities	192,237.68	
New Rail	79,823.03	
New Side and Passing Tracks	201,309.10	
New Bridges	129,581.88	
New Buildings	32,924.04	
New Telegraph Wire	12,577.52	
New Tools and Machinery	32,862.75	
Land and Right of Way	10,887.02	
Miscellaneous Construction	22,201.09	
		$2,568,315.42

On the Burlington & Missouri River Railroad in Nebraska and Branches:

New Rail	$86,754.03
New Side and Passing Tracks	245,198.15
New Bridges	157,595.59
New Buildings	63,653.27
New Fencing	30,627.25
New Telegraph Wire	24,842.99

New Ballast	126,362.44	
New Tools and Machinery	25,029.94	
Electric Line—Black Hills	10,347.80	
Land and Right of Way	14,905.43	
Miscellaneous Construction	39,585.98	
		824,902.87
Amount carried forward		$3,393,218.29
600 Amount brought forward		$3,393,218.29
On the Missouri Lines of the Chicago, Burlington & Quincy Railroad:		
New Line—Old Monroe to Mexico	$91,997.39	
Addition to facilities at Florence Yards	101,577.10	
New Second Track, St. Joseph, Mo., to Amazonia, Iowa	157,874.49	
New Side and Passing Tracks	405,591.23	
New Bridges	113,079.64	
New Buildings	35,602.41	
New Ballast	94,820.32	
New Telegraph Wire	8,724.41	
New Tools and Machinery	21,385.15	
	$1,030,652.14	
Less Miscellaneous Credits	19,195.35	
		1,011,456.79
On the Keokuk & Western Division of the Chicago, Burlington & Quincy Railroad, prior to January 1, 1903, since which date this division has been operated in part as one of the Iowa Lines and in part as one of the Missouri Lines:		
New Bridges	$2,742.57	
New Ballast	1,950.80	
	$4,693.37	
Less Miscellaneous Credits	2,027.85	
		2,665.52
Add balance at Debit of Premium and Discount on Bonds sold and purchased		29,527.70
Total amount charged Construction Account during the year		$4,436,868.30
Cost of New Equipment paid for during the year and charged Equipment Account		2,707,762.99
		$7,144,631.29
Transferred from Investments in Controlled roads on account of purchase of the Burlington & Western Ry		1,232,671.29
Total		$8,377,302.58

601 Expenditures for Construction and Equipment during the year on the standard gauge roads controlled by the Chicago, Burlington & Quincy Railroad Company were as follows:

Extending line and widening gauge, Iowa	$178,400.53	
New Main Tracks	32,412.94	
New Side Tracks	30,166.96	
New Bridges	5,582.49	
Miscellaneous Construction	8,642.76	
	$255,205.68	
Cost of New Equipment paid for during the year and charged Equipment Account	393,888.17	
Total		$649,093.85

Expenditures for Construction during the year on the narrow gauge roads controlled by the Chicago, Burlington & Quincy Railroad Company were as follows:

Third rail, Englewood to Lead and Lead Yards, Black Hills	$32,687.63	
Electric Line, Black Hills	39,163.06	
New Tracks	35,965.14	
New Buildings	5,785.66	
Miscellaneous Construction	2,400.79	
		$116,002.28
Cost of New Equipment paid for during the year and charged to Equipment Account		10,601.89
Total		$126,604.17

602 *Equipment.*

There were added during the year to the Equipment of the Chicago, Burlington & Quincy Railroad Company:

Engines	90
Baggage, Mail and Express Cars	6
Way Cars	2
Box and Stock Cars	1,000
Coal and Flat Cars	200

The Equipment of the C. B. & Q. R. R. Co. on June 30, 1903, was as follows:

Engines	1,262
Passenger and Combination Cars (1)	711
Baggage, Mail and Express Cars (1)	274
Dining Cars	19
Officers' and Pay Cars (2)	21

Way Cars (1-2-3)	563
Boarding Cars (3)	68
Wrecking Cars	10
Box and Stock Cars (3)	32,964
Coal, Flat and Ore Cars (3-4)	12,146

NOTE.—(1) 3 Passenger and Combination Cars added account of error in 1902; 2 changed to Baggage, Mail and Express.
1 changed to Way Car.
(2) 1 Way Car changed to Officers' Car.
(3) 1 Box Car changed to Way Car; 5 changed to Boarding; 56 changed to Company Service; 672 changed to Coal and Flat.
(4) 2 Coal and Flat changed to Company Service.
Humeston and Shenandoah Railway equipment omitted because vacant at time of purchase of road. Engines, 3; Passenger and Combination Cars, 1; Way Cars, 1; Box and Stock Cars, 17; Coal and Flat Cars, 3.

There were added during the year to the Equipment of the standard gauge railroads controlled by the Chicago, Burlington & Quincy Railroad Company:

Coaches	1

And through obtaining control of the Jacksonville & St. Louis Ry.:

Engines	8
Passenger and Combination Cars	8
Baggage, Mail and Express Cars	2
Way Cars	4
Box and Stock Cars	92
Coal and Flat Cars	101

603 The Equipment of the standard gauge railroad companies controlled by the Chicago, Burlington & Quincy Railroad Company on June 30, 1903, was as follows:

Engines	47
Passenger and Combination Cars	33
Baggage, Mail and Express Cars	9
Officers' Cars	1
Way Cars (1)	28
Boarding Cars (2)	4
Box and Stock Cars (1)	901
Coal and Flat Cars	496

NOTE.—(1) 5 Box Cars changed to Way Cars; 2 to Company Service.
(2) 1 Boarding Car changed to Company Service.

There were added during the year to the equipment of the narrow gauge railroad companies controlled by the Chicago, Burlington & Quincy Railroad Company:

Motor Cars	3
Box Cars	1

The Equipment of the narrow gauge railroad companies on June 30, 1903, was as follows:

Engines (1)	19
Motor Cars	3
Passenger and Combination Cars (2)	13
Baggage, Mail and Express Cars (2)	3
Way Cars (2)	3
Wrecking Cars (2)	2
Box and Stock Cars (2)	105
Coal, Flat and Ore Cars (2)	304

NOTE.—(1) Engines sold, 7.
(2) Cars sold: Passenger and Combination, 5; Baggage, Mail and Express, 3; Way Cars, 3; Wrecking Cars, 4; Box and Stock Cars, 127; Coal and Flat Cars, 128.

604 *General Remarks.*

The length of road operated on June 30, 1903, was 8,324 miles, against 8,124 miles on June 30, 1902.

The average number of miles of road operated in 1902-3 was 8,319 miles, against 8,109 miles reported for 1901-2. The gross earnings per mile of road operated were $7,529.56 in 1902-3, against $6,634.02 in 1901-2. The operating expenses, including taxes, per mile in 1902-3 were $4,873.48, against $4,400.40 in 1901-2. The percentage of operating expenses, including taxes, to gross earnings in 1902-3 was 64.72, against 66.63 per cent. in 1901-2.

The number of tons moved one mile increased 23 23/100 per cent., as compared with 1901-2; and freight earnings increased 18 60/100 per cent. Passengers carried one mile increased 13 5/100 per cent., and passenger earnings increased 9 95/100 per cent. The percentage of operating expenses to gross earnings decreased 1 61/100 per cent.

The total amount at the credit of Sinking Funds on June 30, 1902, was $20,352,290.13. This amount was increased during the year by the sum of $1,345,435.33, of which $721,757.70 was paid directly from the earnings of the year, and the remainder, $623,677.63, was the accumulation of interest on bonds held in the Funds. This increase was used in purchasing $1,276,600 bonds, of which $502,000 were canceled, and $774,600 remain uncanceled in the Sinking Fund investments.

The Burlington & North-Western and Burlington & Western Railways, narrow gauge roads extending from Burlington to Oskaloosa, Iowa, which have heretofore been controlled by your Company

through its ownership of their securities, have been consolidated under the name of the Burlington & Western Railway, and during the year changed to standard gauge and leased to your Company. An extension of the Burlington & Western Railway from Oskaloosa to Tracey, Iowa, to connect with your Company's branch from Albia to Des Moines, is now under construction.

The Quinney Railroad Bridge Company, which has heretofore been operated by this Company under a lease requiring an annual
605 payment, as rental, of ten per cent. on the capital stock of the Bridge Company, has been acquired by the purchase of 17,477 shares of its capital stock, out of a total issue of 17,500 shares,* payment being made in C. B. & Q. Illinois Division 3½ per cent. bonds of 1949, thus effecting an annual reduction in the rental amounting to three per cent. on the stock of the Bridge Company.

An arrangement has been made by which the C. B. & Q. consolidated mortgage seven per cent. bonds maturing on July 1, 1903, have been extended for two years at four per cent.

For further details relating to the affairs of the Company, reference is made to the Report of the General Auditor and following statements.

By order of the Board of Directors,

GEORGE B. HARRIS, *President.*

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*The remaining 23 shares have since been purchased.

606 *Report of the General Auditor.*

To the Directors of the Chicago, Burlington & Quincy Railroad Company:

I herewith submit the following statements of account for the year ended June 30, 1903:

General Balance Sheet.
Income Account.
Funded Debt.
Sinking Funds.
Earnings and Expenses.

For the purpose of showing the Assets and Liabilities of both the Railroad and Railway Companies in the same form as has been heretofore used in the reports of the Railroad Company, the General Balance Sheet and Income Account Statement have been made in composite form.

CHARLES I. STURGIS,
General Auditor.

Chicago, July 1, 1903.

607 *Composite* General Balance Sheet, June 30, 1903.*

Assets.

Cost of Road and Equipment		$302,854,666.85
Cost of Investments in Securities of Controlled Roads:		
Davenport, Rock Island & Northwestern R. R. Co.	$1,861,875.74	
Kansas City & Omaha Ry. Co	1,144,301.65	
Jacksonville & St. Louis Railway Co	1,054,053.59	
Iowa & St. Louis Ry. Co	1,194,642.93	
Narrow Gauge Railroads	2,169,253.81	
Quincy R. R. Bridge Co	3,501,982.37	
		10,926,110.09
Sundry Investments		8,088,193.78
Trustees of Sinking Funds, showing the cost of uncanceled securities and cash awaiting investment held in Sinking Funds		13,493,132.66
Material and Supplies		4,882,964.81
Sundry Available Securities		509,800.00
Sundry Accounts and Bills Receivable		20,968,149.85
Cash on hand		4,762,399.62
		$366,285,417.66

*See explanation on page 21.

608 *Composite* General Balance Sheet, June 30, 1903.*

Liabilities.

Capital Stock		$110,839,100.00
Funded Debt		156,050,900.00
Matured Coupons, not presented		82,129.50
Coupon interest to mature July 1, 1903		2,236,125.00
Unpaid Vouchers and Pay Rolls		6,668,888.69
Relief Department Fund		621,176.01
Fire Insurance Fund		408,085.79
Replacement Fund		2,201,863.51
Sundry Current Accounts		16,912,422.12
Renewal Fund		10,000,000.00
Income Account		25,415,533.81
Profit and Loss		13,151,467.77
Sinking Funds, showing the total of payments to and accretions of Sinking Funds for—		
C. B. & Q. 4 and 5 per cent. Bonds of 1919 (Iowa Division)	$4,647,450.25	
C. B. & Q. 4 per cent. Bonds of 1921	1,498,566.92	
C. B. & Q. 4 per cent. Bonds of 1922 (Denver Extension)	2,729,052.69	
C. B. & Q. 4 per cent. Bonds of 1927 (Nebraska Extension)	3,557,952.25	
B. & M. R. R. R. in Nebraska 6 per cent. Bonds of 1918	5,960,926.83	
B. & M. R. R. R. in Nebraska 4 per cent. Bonds of 1910	2,602,795.07	
Republican Valley R. R. 6 per cent. Bonds of 1919	433,362.94	
Lincoln & North Western R. R. 7 per cent. Bonds of 1910	267,618.51	
		21,697,725.46
		$366,285,417.66

*See explanation on page 21.

609 *Composite* Income Account.*

Credit.

June 30, 1902, Balance as per Annual Report 1901–1902		$19,785,021.32
Freight Earnings	$42,131,982.56	
Passenger Earnings	13,886,343.82	
Miscellaneous Earnings	5,629,270.34	
		61,647,596.72
Interest on Securities of Controlled Roads	2,461.86	
Other Interest and Income	268,345.06	
		270,806.92
Net receipts of Land Department		78,208.26
War Revenue Tax		711.48
		$81,782,344.70

*See explanation on page 21.

610 *Composite* Income Account.*

Debit.

Operating Expenses		$37,742,439.23	
Rentals—Fixed Charges		192,173.95	
Taxes, State, County and City		1,748,095.32	
			$39,682,708.50
Interest on Bonds:			
C. B. & Q. and Branches		$7,344,424.44	
Cash paid to Sinking Funds:			
C. B. & Q. 4 per cent. Bonds of 1922.	$79,680.00		
C. B. & Q. 4 per cent. Bonds of 1921.	43,000.00		
C. B. & Q. 4 per cent. Bonds of 1927.	293,607.70		
C. B. & Q. 4 and 5 per cent. Bonds of 1919 (Iowa Division)	232,530 00		
B. & M. R. R. in Nebraska 4 per cent. Bonds of 1910	66,940.00		
Lincoln & North-Western R. R. 7 per cent. Bonds of 1910	6,000.00		
		721,757.70	
Other Charges		759,465.00	
Dividends:			
October 1, 1902	$1,939,492.50		
January 1, 1903	1,939,684.25		
April 1, 1903	1,939,684.25		
July 1, 1903	1,939,684.25		
		7,758,455.25	
			16,684,102.39
Balance at credit of Income Account			25,415,533.81
			$81,782,344.70

*See explanation on page 21.

611 Chicago, Burlington &

Funded Debt,

Description of Bonds.	Date of Issue.
C. B. & Q. Consolidated Mortgage Bonds and Scrip. See Note "II"	July 1, 1873
C. B. & Q. Iowa Division Mortgage Sinking Fund Bonds. See Note "III"	Oct. 1, 1879
C. B. & Q. Sinking Fund Bonds. See Note "IV"	Sept. 1, 1881
C. B. & Q. Sinking Fund Bonds (Denver Extension). See Note "V"	Dec. 1, 1881
C. B. & Q. Plain Bonds. No Sinking Fund	May 1, 1883
C. B. & Q. Nebraska Extension Mortgage Sinking Fund Bonds. See Note "VI"	May 2, 1887
C. B. & Q. Convertible Bonds. See Note "VII."	
First Series	Sept. 1, 1890
Second Series	June 1, 1892
C. B. & Q. Chicago & Iowa Division Bonds. See Note "VIII"	Feb. 1, 1895
C. B. & Q. Illinois Division Bonds. See Note "IX"	July 1, 1900
B. & M. R. R. R. in Nebraska Consolidated Mortgage Sinking Fund Bonds. See Note "X"	July 1, 1878
B. & M. R. R. R. in Nebraska Sinking Fund Bonds. See Note "XI"	Jan. 1, 1880
Republican Valley R. R. Mortgage Sinking Fund Bonds. See Note "XII"	July 1, 1879
Hannibal & St. Joseph R. R. Mortgage Bonds. See Note "XIII"	Apr. 30, 1881
Kansas City, St. Joseph & Council Bluffs R. R. Mortgage Bonds. See Note "XIV"	Jan. 1, 1877
Tarkio Valley R. R. Mortgage Bonds. See Note "XV"	June 1, 1880
Nodaway Valley R. R. Mortgage Bonds. See Note "XVI"	June 1, 1880
Contingent Liabilities.	
Atchison & Nebraska R. R. Bonds. See Note "XVII"	Mar. 1, 1878
Lincoln & North-Western R. R. Bonds. See Note "XVIII"	Jan. 1, 1880

Quincy Railroad Company. 612

June 30, 1903.

Date Payable.	Interest.		*Amount of Bonds Outstanding.
	Rate.	Payable.	
July 1, 1903	7	Jan. 1 and July 1	$21,699,200
Oct. 1, 1919	{5 / 4}	April 1 and Oct. 1	{ 2,505,000 / 8,222,000
Sept. 1, 1921	4	Mar. 1 and Sept. 1	4,300,000
Feb. 1, 1922	4	Feb. 1 and Aug. 1	7,968,000
May 1, 1913	5	May 1 and Nov. 1	9,000,000
May 1, 1927	4	May 1 and Nov. 1	25,627,000
Sept. 1, 1903	5	Mar. 1 and Sept. 1	124,200
Sept. 1, 1903	5	Mar. 1 and Sept. 1	179,500
Feb. 1, 1905	5	Feb. 1 and Aug. 1	2,320,000
July 1, 1949	3½	July 1 and Jan. 1	41,060,000
July 1, 1918	6	Jan. 1 and July 1	13,561,000
Jan. 1, 1910	4	Jan. 1 and July 1	3,347,000
July 1, 1919	6	Jan. 1 and July 1	1,078,000
Mar. 1, 1911	6	Mar. 1 and Sept. 1	8,000,000
Jan. 1, 1907	7	Jan. 1 and July 1	5,000,000
June 1, 1920	7	June 1 and Dec. 1	177,000
June 1, 1920	7	June 1 and Dec. 1	158,000
Mar. 1, 1908	7	Mar. 1 and Sept. 1	1,125,000
Jan. 1, 1910	7	Jan. 1 and July 1	600,000
Total			*$156,050,900

*See Note "I."

613 *Outstanding Bonds.*

NOTE I.—The amount of bonds oustanding ($156,050,900) includes uncanceled bonds held in sinking funds, amounting to $13,639,100.

C., B. & Q. Consolidated Mortgage 7's.

NOTE II.—This is a first mortgage on the following mileage, and upon 204 miles of second track in Illinois, and the Company's terminals in Chicago:

	Miles.	Miles.
Chicago, Ill., to Burlington, Ia.	204.27	
Peoria, Ill., to Galesburg, Ill.	52.77	
Galesburg, Ill., to Quincy, Ill.	100.05	
Yates City, Ill., to Lewistown, Ill.	30.13	
Aurora, Ill., to Turner Junction, Ill.	12.35	
Geneva, via Aurora to Streator, Ill.	67.25	
		466.82
It also covers certain branches in Illinois, and the Keokuk & St. Paul Ry. in Iowa, as per statement below:		
Shabbona, Ill., to Sterling, Ill.	47.98	
Mendota, Ill., to East Clinton, Ill.	65.35	
Buda, Ill., to Elmwood, Ill.	44.51	
Lewistown, Ill., to Rushville, Ill.	32.66	
Galva, Ill., to New Boston, Ill.	50.63	
East Burlington, Ill., to Carthage, Ill.	30.41	
Carthage, Ill., to Quincy, Ill.	39.79	
Arpee, Ill., to Keithsburg, Ill.	6.25	
Keokuk & St. Paul Ry.:		
Burlington, Ia., to Keokuk, Ia.	42.33	
		359.91
Total		826.73

614 *C., B. & Q. Iowa Division 4's and 5's.*

NOTE III.—This is a first mortgage on the following mileage and on 85.69 miles of second track in Iowa:

	Miles.
Burlington, Ia., to Pacific Junction, Ia.	276.86
Red Oak, Ia., to Hamburg, Ia.	39.17
Chariton, Ia., to Leon, Ia.	36.72
Creston, Ia., to Hopkins, Mo.	42.75
Main track in Council Bluffs, Ia.	1.57
	397.07

It also covers certain branches in Iowa and Missouri, as per statement below:

Leon, Mt. Ayr & Southwestern R. R.		
Leon, Ia., via Bethany Junct., Mo., to Grant City, Mo., and from Bethany Junct., Mo., to Albany, Mo.	103.94	
Nebraska City, Sidney & Northeastern R. R.		
Hastings, Ia., to Sidney, Ia.	21.12	
Brownville & Nodaway Valley R. R.		
Villisca Junct., Ia., to Burlington Junct., Mo.	35.00	
Clarinda, College Springs & Southwestern R. R.		
Clarinda, Ia., to Northboro, Ia.	17.82	
Red Oak & Atlantic R. R.		
Red Oak, Ia., to Griswold, Ia.	18.04	
Creston & Northern R. R.		
Creston, Ia., to Fontanelle, Ia.	27.50	
Hastings & Avoca R. R.		
Hastings, Ia., to Carson, Ia.	15.79	
Chariton, Des Moines & Southern R. R.		
Chariton, Ia., to Indianola, Ia.	33.16	
Des Moines & Knoxville R. R.		
Knoxville, Ia., to Des Moines, Ia.	35.02	
St. Joseph & Des Moines R. R.		
Albany, Mo., to St. Joseph, Mo.	48.09	
Western Iowa R. R.		
Fontanelle, Ia., to Cumberland, Ia.	20.33	
Carried forward	375.81	397.07
	Miles.	Miles.
615 *Brought forward*	375.81	397.07
Albia, Knoxville & Des Moines R. R.		
Albia, Ia., to Knoxville, Ia.	32.92	
Humeston & Shenandoah Ry.		
Van Wert, Ia., to Shenandoah, Ia.	95.45	
		504.18
Total		901.25

The sinking fund payment is 1½ per cent. of the par value of all bonds issued, payable October 1, and is to be invested in bonds of this issue at a maximum price of 105 and accrued interest for 5's, and par and accrued interest for 4's. Bonds to be drawn at maxi-

mum price if they cannot be purchased, and when so purchased or drawn, to be canceled.

C., B. & Q. Sinking Fund 4's of 1921.

NOTE IV.—Sinking fund payment, $43,000 per annum, payable August 1, is to be invested in bonds of this issue at a maximum price of par and accrued interest. Bonds to be drawn at maximum price if they cannot be purchased, and to be held by the trustee uncanceled until maturity. Interest on bonds held in the fund to be added to the yearly payment, and invested in the same manner. Of the $4,300,000 bonds outstanding, $1,583,000 are now in the sinking funds.

C., B. & Q. Sinking Fund 4's of 1922.

(Denver Extension.)

NOTE V.—Secured by the deposit with the trustee of an equal amount of first mortgage bonds of the railroad companies whose roads are described below, viz:

	Miles.	Miles.
Republican Valley R. R. Co.		
West line of Red Willow County, Neb., to west line of Nebraska	72.60	
Nemaha, Neb., to Beatrice, Neb.	65.20	
Nemaha, Neb., to Salem, Neb.	17.60	
Table Rock, Neb., to Wymore, Neb.	39.23	
		194.63
Burlington & Colorado R. R. Co.		
West line of Nebraska to Denver, Colo.		174.89
Total		369.52

616 In addition to the above, the trustee holds $540,000 out of a total of $2,105,000 of Republican Valley R. R. Company's first mortgage bonds secured upon the mileage described below, the remaining $1,565,000 of these bonds being held by the trustee of the B. & M. R. R. R. in Nebraska consolidated six per cent. mortgage. (See Note X.)

	Miles.
Aurora, Neb., to York, Neb.	21.68
Aurora, Neb., to Central City, Neb.	19.63
Aurora, Neb., to Grand Island, Neb.	18.51
Beatrice, Neb., via Wymore, to Red Cloud, Neb.	115.58
	175.40

Sinking fund payment, $79,680 per annum, payable January 1 and July 1, is to be invested in bonds of this issue at a maximum price of par and accrued interest. Bonds to be drawn at maximum price if they cannot be purchased and to be held uncanceled by the

trustee until maturity. Interest on bonds held in the fund to be added to the semi-annual payments, and invested in the same manner. Of the $7,968,000 bonds outstanding, $2,824,700 are now in the sinking funds.

C., B. & Q. Nebraska Extension 4's.

	Miles.	Miles.
NOTE VI.—This is a first mortgage on a section of the Republican Valley R. R., from Hastings to Aurora, Neb.	27.75	
And on a section of the Grand Island & Wyoming Central R. R., from Grand Island to Alliance, Neb.	269.60	
		297.35

And is also secured by the deposit with the trustee of $23,494,200 of the first mortgage bonds of the railroad companies whose roads are described below, viz:

Nebraska & Colorado R. R.	Miles.	Miles.
De Witt, Neb., via Strang, Blue Hill and Holdrege, to west line of Nebraska	298.32	
Fairmont, Neb., via Strang, to Chester, Neb.	45.19	
Carried forward	343.51	297.35

	Miles.	Miles.
617 *Brought forward*	343.51	297.35
Edgar, Neb., to Superior, Neb.	26.53	
Kenesaw, Neb., via Holdrege, to Oxford, Neb.	60.67	
		430.71
Omaha & North Platte R. R.		
Omaha, Neb., via Ashland, to Schuyler, Neb.		80.78
Lincoln & Black Hills R. R.		
Central City, Neb., to Ericson, Neb.	62.94	
Palmer, Neb., to Arcadia, Neb.	54.02	
Greeley Centre, Neb., to Burwell, Neb.	40.92	
		157.88
Colorado & Wyoming R. R.		
From Junction with Nebraska & Colorado R. R., on west line of State of Nebraska, to Junction with Cheyenne & Burlington R. R., on the south line of Wyoming		144.58
Cheyenne & Burlington R. R.		
From Junction with Colorado and Wyoming R. R., as above, to Cheyenne, Wyo.		29.01
Oxford & Kansas R. R.		
Orleans, Neb., to a Junction with the Beaver Valley R. R., on the south line of the State of Nebraska		59.60

Beaver Valley R. R.	
From a Junction with the Oxford & Kansas R. R., as above, to St. Francis, Kan.	74.37
Chicago, Nebraska & Kansas R. R.	
Odell, Neb., to Concordia, Kan.	70.38
Republican Valley, Kansas & Southwestern R. R.	
Republican City, Neb., to Oberlin, Kan.	78.23
Republican Valley & Wyoming R. R.	
Culbertson, Neb., to Imperial, Neb.	49.17
	1,472.06

Sinking fund is 1 per cent. of the par value of all bonds issued, payable annually on May 1, and is to be invested in bonds of this issue at a maximum price of 110 and accrued interest, the bonds so purchased to be canceled. If in any year sufficient bonds to absorb the fund cannot be purchased on proposals at or under the maximum price, any unexpended remainder of the sinking-fund payment is to be returned to the general funds of the company, and its obligation to purchase bonds therewith ceases. Of the $25,627,000 outstanding bonds of this issue, $654,000 are held uncanceled in the Sinking Funds.

618 *C., B. & Q. Convertible 5's.*

NOTE VII.—Convertible at par into the stock of the C., B. & Q. R. R. Co. at any time up to November 30, 1902, except when the transfer books of the company are closed.

C., B. & Q. Chicago & Iowa Division 5's.

NOTE VIII.—Secured by the deposit with the trustee of $2,320,000 of the first mortgage bonds of the Chicago & Iowa and Joliet, Rockford & Northern R. R. Companies, whose roads are described below:

	Miles.	Miles.
Chicago & Iowa R. R.		
Aurora, Ill., to Forreston, Ill.	78.44	
Flag Center, Ill., to Rockford, Ill.	23.50	
		101.94
Joliet, Rockford & Northern R. R.		
Sheridan, Ill., to Paw Paw, Ill.		19.54
		121.48

C., B. & Q. Illinois Division 3½'s.

NOTE IX.—This is a first mortgage on the following mileage:

Oregon, Ill., to St. Paul and Minneapolis, Minn., with branches from Savanna, Ill., to Fulton, Ill., Galena Junction, Ill., to Galena, Ill., East Dubuque, Ill., to Dubuque, Iowa, and East Winona, Wis., to Winona, Minn.	341.46	
	Miles.	Miles.
Quincy, Ill., to Louisiana and Hannibal, Mo.	46.36	
Streator, Ill., to Walnut, Ill.	58.76	
Galesburg, Ill., to Rio, Ill.	12.22	
Rock Island, Ill., via Barstow to Wann, Ill.	227.54	
Barstow, Ill., to Sterling Junction, Ill.	40.44	
Gladstone, Ill., to Keithsburg, Ill.	17.13	
		743.91

and also covers, and upon the payment of the Consolidated Mortgage seven per cent. bonds due July 1, 1903, and of the Chicago & Iowa Division five per cent. bonds due February 1, 1905, will become a first mortgage on the terminal property of the Company in Chicago and all the remaining railroad of the Company east of the Mississippi River, amounting to 897.82 miles, in addition to the 743.91 miles specified above.

These bonds may be redeemed by the Company, on six months' notice, at 105 and accrued interest, upon any interest day after July 1, 1929.

619 *B. & M. R. R. R. in Neb. Consolidated 6's.*

	Miles.
NOTE X.—This is a first mortgage on the road from Pacific Junction, Ia., to Kearney, Neb.	195.29

It also covers certain branches in Nebraska, as per statement below, viz:

Omaha & Southwestern R. R.		
Omaha, Neb., to Oreapolis, Neb.	16.84	
Crete, Neb., to Beatrice, Neb.	30.09	
		46.93
Nebraska Railway.		
Nemaha, Neb., via Nebraska City and Lincoln, to York, Neb.		135.74
Republican Valley R. R.		
Hastings, Neb., to the west line of Franklin County, Neb.		76.81
		454.77

In addition to the above, the trustee holds $1,565,000 out of a total of $2,105,000 of the first mortgage bonds of the Republican Valley R. R. Co., secured upon the mileage described below, the remaining $540,000 of these bonds being held by the trustee of the C., B. & Q. Denver Extension mortgage. (See Note V.)

Republican Valley R. R.	Miles.
Aurora, Neb., to York, Neb.	21.68
Aurora, Neb., to Central City, Neb.	19.63
Aurora, Neb., to Grand Island, Neb.	18.51
Beatrice, Neb., via Wymore, to Red Cloud, Neb.	115.58
	175.40

Of the $13,561,000 bonds outstanding, $6,037,400 are held uncanceled in the sinking funds, and the interest thereon is to be invested semi-annually by the trustee in bonds of this issue, at a maximum price of par and accrued interest; bonds to be drawn if they cannot be purchased, and whether purchased or drawn to be held uncanceled in the fund. $1,000 bonds from No. 1 to No. 4400, inclusive, and $600 bonds from No. 1 to No. 1000, inclusive, amounting in the aggregate to $5,000,000, are exempt from drawing until July 1, 1908. This fund, with its accumulations, will retire the whole issue at maturity.

B. & M. R. R. R. in Neb. Sinking Fund 4's of 1910.

NOTE XI.—Sinking fund payment is $66,940 per annum, payable June 1 and December 1, and is to be invested in bonds of this
620 issue at a maximum price of par and accrued interest. If bonds cannot be purchased at or under the maximum price, the fund is to be invested, at the discretion of the trustee, in other securities, with the assent of the company. Bonds of this issue purchased for the fund to be held by the trustee uncanceled, and interest thereon to be added to the semi-annual payments and invested in the same manner. Of the $3,347,000 outstanding bonds of this issue, $1,933,000 are held uncanceled in the sinking funds.

Republican Valley 6's.

NOTE XII.—This is a first mortgage on the road from the west line of Red Willow County to the west line of Franklin County, Neb., 89.90 miles. Of the $1,078,000 outstanding bonds of this issue, $454,400 are held uncanceled in the sinking funds, and the interest thereon is to be invested annually by the trustee in bonds of this issue at a maximum price of par and accrued interest. Bonds to be drawn if they cannot be purchased, and when so purchased or drawn to be held uncanceled in the funds. This fund, with its accumulations, will retire the whole issue at maturity.

H. & St. J. R. R.

NOTE XIII.—This is a first mortgage on the Hannibal & St. Joseph R. R. and branches, as below:

	Miles.
Hannibal, Mo., via Palmyra & Cameron, to St. Joseph, Mo..	206.52
Palmyra, Mo., to West Quincy, Mo.	12.65
Cameron, Mo., to Kansas City, Mo.	54.16
St. Joseph, Mo., to Atchison, Kan.	15.89
	289.22

K. C., St. J. & C. B. R. R.

NOTE XIV.—This is a first mortgage on the Kansas City, St. Joseph & Council Bluffs R. R., and certain branches, as described below: In case of liquidation, bonds Nos. 1 to 500, both inclusive, are to have preference.

	Miles.
K. C., St. J. & C. B. R. R., Kansas City, Mo., to Council Bluffs, Ia.	189.26
Hopkins Branch, Amazonia, Mo., to Hopkins, Mo.	52.30
Atchison Branch, Winthrop, Mo., to Atchison, Kan.	3.51
East Leavenworth, Mo., to Leavenworth, Kan.	1.05
Nebraska City Branch, Nebraska City Junction, Ia., to East Nebraska City, Ia.	3.65
	249.77

621 *Tarkio Valley R. R.*

NOTE XV.—This is a first mortgage on the branch from Corning, Mo., on the main line of the K. C. St. J. & C. B. R. R., to a junction in Page County, Iowa, with the branch of the C. B. & Q. R. R. from Clarinda, Iowa, southwest—29.54 miles. The K. C. St. J. & C. B. R. R. Co. guarantees these bonds, principal and interest, and agrees to apply $11,000 per annum to the purchase of bonds of this issue at a maximum price of par and accrued interest. Bonds to be drawn if they cannot be purchased, and when so purchased or drawn to be canceled.

Nodaway Valley R. R.

NOTE XVI.—This is a first mortgage on the branch from Bigelow, Mo., on the main line of the K. C. St. J. & C. B. R. R. to Burlington Junction, Mo.—31.54 miles. The K. C. St. J. & C. B. R. R. Co. guarantees these bonds, principal and interest, and agrees to apply $10,000 per annum to the purchase of bonds of this issue at a maximum price of par and accrued interest. Bonds to be drawn if they cannot be purchased, and when so purchased or drawn to be canceled. Of the $158,000 outstanding bonds of this issue, $56,000 are held uncanceled in the sinking funds.

Atchison & Nebraska 7's of 1908.

NOTE XVII.—This is a first mortgage on the road from Atchison, Kan., to Lincoln, Neb., 144.95 miles. Of the $1,125,000 outstanding bonds of this issue, $49,600 are held uncanceled in the sinking funds.

Lincoln & North-Western 7's of 1910.

NOTE XVIII.—This is a first mortgage on the road from Lincoln, Neb., to Columbus, Neb., 73.49 miles. Sinking fund payment is $6,000 per annum, payable on or before December 31, and is to be invested in bonds of this issue at a maximum price of 110 and accrued interest. Bonds so purchased to be held uncanceled in the fund. If bonds cannot be purchased at or under the maximum price, the fund is to be invested at the discretion of the trustees. Interest on bonds held in the fund to be added to the annual payment, and invested in the same manner. Of the $500,000 outstanding bonds of this issue, $47,000 are held uncanceled in the sinking funds.

622 *Sinking Fund for C., B. & Q. 4 Per Cent. Bonds of* 1921.

$1,583,000	C. B. & Q. 4 per cent. Bonds of 1921, costing.....	$1,464,017.34
	Cash awaiting investment.	34,542.58
		$1,498,559.92

Sinking Fund for C., B. & Q. 4 Per Cent. Bonds of 1922.

Denver Extension.

$2,809,700	C. B. & Q. 4 per cent. Bonds of 1922, costing.....	$2,688,803.29
	Cash awaiting investment...	40,249.40
		$2,729,052.69

Sinking Fund for C., B. & Q. 4 and 5 Per Cent. Bonds of 1919.

Iowa Division.

$495,000	C. B. & Q. 5 per cent. Bonds of 1919 (canceled), costing.	$518,291.32
4,280,000	C. B. & Q. 4 per cent. Bonds of 1919 (canceled), costing.	4,128,349.23
$4,775,000	Total cost	$4,646,640.55
	Cash awaiting investment.....	809.70
		$4,647,450.25

Sinking Fund for C., B. & Q. 4 Per Cent. Bonds of 1927.

Nebraska Extension.

$3,814,000	C. B. & Q. 4 per cent. Bonds of 1927 (canceled), costing.	$3,557,952.25

Sinking Fund for B. & M. R. R. R. in Nebraska Consolidated Mortgage 6 Per Cent. Bonds of 1918.

$5,959,200	B. & M. R. R. R. in Nebraska Consolidated Mortgage 6 per cent. Bonds of 1918, costing	$5,959,200.00
	Cash awaiting investment	1,726.83
		$5,960,926.83

623 *Sinking Fund for B. & M. R. R. R. in Nebraska 4 Per Cent. Bonds of* 1910.

$1,933,000	B. & M. R. R. R. in Nebraska 4 per cent. Bonds of 1910, costing	$1,801,330.04
639,000	C. B. & Q. Nebraska Extension 4 per cent. Bonds of 1927, costing	687,940.18
56,000	Nodaway Valley R. R. 7 per cent. Bonds of 1920, costing	61,605.00
$2,628,000	Total cost	$2,550,875.22
	Cash awaiting investment	51,919.85
		$2,602,795.07

Sinking Fund for Republican Valley R. R. 6 Per Cent. Bonds of 1919.

$433,000	Republican Valley R. R. 6 per cent. Bonds of 1919, costing	$433,000.00
	Cash awaiting investment	362.94
		$433,362.94

Sinking Fund for Lincoln & North-Western R. R. 7 Per Cent. Bonds of 1910.

$21,400	Republican Valley R. R. 6 per cent. Bonds of 1910, costing	$22,167.50
49,600	Atchison & Nebraska R. R. 7 per cent. Bonds of 1908, costing	60,947.76
78,200	B. & M. R. R. R. in Nebraska Consolidated Mortgage 6 per cent. Bonds of 1918, costing	85,515.75
15,000	C. B. & Q. R. R. Denver Extension 4 per cent. Bonds of 1922, costing	15,120.00
15,000	C. B. & Q. R. R. Nebraska Extension 4 per cent. Bonds of 1927, costing	16,218.75
47,000	Lincoln & North-Western R. R. 7 per cent. Bonds of 1910, costing	57,980.00
$226,200	Total cost	$257,949.76
	Cash awaiting investment	9,668.75
		$267,618.51

624 *Gross Earnings, Operating Expenses, Taxes, and Net Earnings Compared With the Previous Fiscal Year.*

Gross Earnings.

Per cent.	1902-3.	Class.	1901-2.	Per cent.
68.34	$42,131,982.56	Freight	$35,455,954.99	67.01
22.53	13,886,343.82	Passenger	12,660,405.92	23.93
3.32	2,048,614.05	Mail	1,920,904.88	3.63
1.92	1,179,700.63	Express	1,025,007.28	1.94
3.89	2,400,955.66	Miscellaneous	1,848,645.38	3.49
	$61,647,596.72	Total	$52,910,918.45	

Operating Expenses.

Per cent.	1902-3.	Class.	1901-2.	Per cent.
46.65	$17,607,547.80	Conducting Transportation	$16,969,370.90	51.
20.01	7,550,407.68	Maintenance of Equipment	7,313,118.55	21.98
23.90	9,020,916.82	Maintenance of Road and Structures	7,578,890.92	22.78
9.44	3,563,566.93	General Expenses	1,410,099.80	4.24
	$37,742,439.23	Total	$33,271,480.17	

Summary of Earnings and Expenses.

Per cent. of gross earnings.	1902-3.		1901-2.	Per cent. of gross earnings.
	$61,647,596.72	Gross Earnings	$52,910,918.45	
61.22	37,742,439.23	Operating Expenses	33,271,480.17	62.88
38.78	$23,905,157.49	Net Earnings	$19,639,438.28	37.12
2.83	1,747,383.84	Taxes	1,614,572.16	3.05
35.95	$22,157,773.65	Income from Operation	$18,024,866.12	34.07

625 Land Department.

Nebraska.

The gross sales for the year ending June 30, 1903, were 3,086 $\frac{67}{100}$ acres, for $18,252.87, an average price of $5.91 per acre, and no lands having reverted, the net result of the year's operations is represented by the above figures.

Receipts.

Cash received during the year $88,304.86

Disbursements.

Taxes	$61.11
Legal Expenses	2,174.39
Salaries and Office Expenses	7,065.06
Advertising and Commissions	1,097.29
Surplus to Treasurer	77,907.01
	$88,304.86

Assets June 30, 1903.

Principal represented by Contracts on hand	$79,364.77
Interest represented by Contracts on hand	8,656.62
Due from Tax Delinquents	4.90
Town Lots unsold, estimated	150.00
$190\frac{38}{100}$ acres of Unsold Lands, estimated at $5.00 per acre	951.90
	$89,128.19
Deduct Partial Payments	2,268.63
	$86,859.56

W. W. BALDWIN,
Land Commissioner.

626 Chicago, Burlington & Quincy Railroad Company and Controlled Companies.

Miles of Road Operated.

June 30, 1903.

Chicago, Burlington & Quincy Railroad.

Roads East of the Missouri River.

	Owned or Controlled through Ownership of Securities.	Leased.	Total.
Chicago, via Aurora and Galesburg, Ill., and Burlington, Iowa, to Pacific Junction, Iowa	477.82	1.22	479.04
Pacific Junction, Iowa, to Council Bluffs, Iowa	17.25	.....	17.25
Council Bluffs, to Omaha, Neb., via Union Pacific Transfer	1.37	2.79	4.16
Galesburg to Quincy, Ill.	99.91	.....	99.91
Aurora to West Chicago, Ill.	12.35	.....	12.35
Geneva, via Aurora to Streator, Ill.	67.25	.....	67.25
South Aurora, via Oregon & Savanna, Ill., to St. Paul and Minneapolis, Minn.	379.90	26.80	406.70
Oregon to Forreston, Ill.	17.96	.....	17.96
Flag Center to Rockford, Ill.	23.50	.....	23.50
Galena Junction to Galena, Ill.	3.82	.....	3.82
East Dubuque, Ill., to Dubuque, Iowa	.53	1.12	1.65
East Winona, Wis., to Winona, Minn.	1.34	.98	2.32
Sheridan via Earlville to Paw Paw, Ill.	19.54	.....	19.54
Streator to Walnut, Ill.	59.49	.....	59.49
Shabbona to Sterling, Ill.	47.98	.....	47.98
Mendota via East Clinton and Fulton to Savanna, Ill.	81.73	.....	81.73
East Clinton, Ill., to Clinton, Iowa	.39	.98	1.37
Buda to Elmwood, Ill.	44.82	.....	44.82
Yates City to Rushville, Ill.	62.79	.....	62.79
Galva, via Arpee, to New Boston, Ill.	50.63	.....	50.63
Arpee to Keithsburg, Ill.	6.25	.....	6.25
Gladstone to Keithsburg, Ill.	17.13	.....	17.13
Galesburg to Peoria, Ill.	52.77	.....	52.77
Chapin to Jacksonville	.....	10.00	10.00
Galesburg to Rio, Ill.	12.22	.....	12.22
Carthage Junction, via Carthage, to Quincy, Ill.	70.20	.24	70.44
Quincy, Ill., to Louisiana & Hannibal, Mo.	46.94	2.07	49.01
Rock Island, via Monmouth and Beardstown to East St. Louis, Ill.	227.54	19.05	246.59
Carried forward	1,903.42	65.25	1,968.67

627

	Owned or Controlled through Ownership of Securities.	Leased.	Total.
Brought forward	1,903.42	65.25	1,968.67
East St. Louis, via Eads Bridge, to St. Louis Union Depot	.....	3.84	3.84
Rock Island, Ill., to Clinton, Iowa, via Davenport, Iowa	.....	38.02	38.02
Barstow to Sterling, Ill.	40.44	.....	40.44
Ft. Madison, Iowa, to Batavia, Iowa	55.95	.....	55.95
Albia, via Knoxville, to Des Moines, Iowa	67.94	.....	67.94
Chariton, Iowa, to St. Joseph, Mo., via Humeston and Bethany	143.03	.....	143.03
Bethany Junction via Grant City to Albany, Mo.	65.54	.....	65.54
Charriton to Indianola, Iowa	30.49	.....	30.49
Creston, Iowa, to St. Joseph, Mo.	105.47	.....	105.47
Creston, via Fontanelle, to Cumberland, Iowa	47.83	.....	47.83
Red Oak to Nebraska City Junction, Iowa	46.14	.....	46.14
Red Oak to Griswold, Iowa	18.04	.....	18.04
Hastings to Sidney, Iowa	21.12	.....	21.12
Hastings to Carson, Iowa	15.79	.23	16.02
Burlington to Oskaloosa, Iowa	90.82	13.77	104.59
Winfield to Washington, Iowa	18.64	.....	18.64
Des Moines to Cainesville, Mo.	110.70	.....	110.70
Total Number of Miles Operated	2,781.36	121.11	2,902.47

Roads West of the Missouri River.

Operated under the name of

The Burlington & Missouri River Railroad in Nebraska.

Pacific Junction, Iowa, via Plattsmouth, Ashland, Lincoln, Kenesaw and Oxford, Neb., to Denver, Colo.	543.45	.....	543.45
St. Joseph, Mo., via Rulo, Wymore and Red Cloud, Neb., to Oxford, Junction, Neb.	294.92	.....	294.92
Lincoln, via Grand Island, Neb., and Edgemont, South Dakota, to Billings, Mont.	824.79	12.62	837.41
Oreapolis to Omaha, Neb.	16.88	.....	16.88
Omaha, via Ashland, to Schuyler, Neb.	80.59	.....	80.59
South Omaha to Pappio, Neb.	4.47	4.95	9.42
Nebraska City Junction, Iowa, to Lincoln, Neb.	62.59	.....	62.59
Nebraska City, via Nemaha, to Salem, Neb.	44.57	.....	44.57
Nemaha, via Tecumseh, to Beatrice, Neb.	65.19	.....	65.19
Atchison, Kan., to Rulo Junction, Neb.	45.45	.....	45.45
Table Rock to Lincoln, Neb.	60.64	.....	60.64
Lincoln, via Milford, to Columbus, Neb.	73.49	.....	73.49
Crete, via Dewitt and Beatrice to Wymore, Neb.	42.73	.....	42.73
Odell, Neb., to Concordia, Kan.	71.04	.....	71.04
Dewitt, via Holdrege, Neb., to Cheyenne, Wyo.	471.91	.....	471.91
Fairmont, via Strang, to Crester, Neb.	45.19	.....	45.19
Carried forward	2,747.90	17.57	2,765.47

	Owned or Controlled through Ownership of Securities.	Leased.	Total.
Brought forward	2,747.90	17.57	2,765.47
Edgar to Superior, Neb.	26.53	.....	26.53
Aurora, via Hastings, to Lester, Neb.	64.18	.....	64.18
Aurora, via Central City, Palmer, and Greeley Center, to Ericson, Neb.	82.65	.....	82.65
Palmer to Sargent, Neb.	73.29	.....	73.29
Greeley Center to Burwell, Neb.	40.38	.....	40.38
Kenesaw to Kearney, Neb.	24.14	.....	24.14
Republican, Neb., to Oberlin, Kan.	78.23	.....	78.23
Orleans, Neb., to St. Francis, Kan.	133.79	.....	133.79
Culbertson to Imperial, Neb.	49.17	.....	49.17
Denver, Colo., to Lyons and Tower, Colo.	35.67	11.30	46.97
Edgemont, via Minnekahta and Englewood to Deadwood, S. D.	106.40	.....	106.40
Englewood to Spearfish, S. D.	31.91	.....	31.91
Minnekahta to Hot Springs, S. D.	13.34	.....	13.34
Newcastle to Cambria, Wyo.	7.00	.....	7.00
Hill City to Keystone, S. D.	9.50	.....	9.50
Alliance, Neb., to Brush, Colo.	126.44	23.67	150.11
Northport, Neb., to Guernsey, Wyo.	94.91	.....	94.91
Toluca, Mont., to Cody, Wyo.	130.15	.....	130.15
Stromsburg, Neb., to Alma, Neb.	149.55	2.87	152.42
McCool Jct., Neb., to Endicott, Neb.	43.53	12.00	55.53
Total Standard Gauge	4,068.06	67.41	4,136.07
NARROW GAUGE.			
Lead, S. D., to Piedmont, S. D.	36.57	.....	36.57
Bucks, S. D., to Este, S. D.	13.88	.....	13.88
Deadwood Central R. R., S. D.	17.08	.....	17.08
Total Narrow Gauge	67.53	.....	67.53
Total Number of Miles Operated	4,136.19	67.41	4,203.60
Roads in Missouri and Iowa. Operated under the name of Missouri Lines.			
St. Louis, Mo., to Burlington, Iowa	212.27	4.94	217.21
Branch to Franklin Ave. Station in St. Louis	1.29	.....	1.29
Keokuk, Iowa, to Mt. Pleasant, Iowa	48.43	.....	48.43
West Quincy, Mo., to Quincy, Ill.	2.21	1.37	3.58
Cuivre Junction to St. Peters, Mo.	10.00	.....	10.00
Viele, Iowa, to Carrollton, Mo.	181.03	14.03	195.06
Hannibal, Mo., via Palmyra and Cameron to St. Joseph, Mo.	206.52	.....	206.52
Palmyra Jct., Mo., to Moody, Mo.	8.58	.....	8.58
Carried forward	670.93	20.94	691.87

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	Owned or Controlled through Ownership of Securities.	Leased.	Total.
Brought forward	670.93	20.94	691.87
Cameron, Mo., to Harlem, Mo.	52.52	.....	52.52
Kansas City, Mo., to Council Bluffs, Iowa	191.02	.20	191.22
Council Bluffs, Iowa, to Omaha, Neb., via U. P. Transfer	1.37	2.79	4.16
Armour, Mo., to Atchison, Kan.	3.51	.49	4.00
East Leavenworth, Mo., to Leavenworth, Kan.	1.05	1.73	2.78
Bigelow, Mo., to Villisca	67.78	.....	67.78
Corning, Mo., to Clarinda, Iowa	45.46	.....	45.46
At St. Joseph, Mo.	2.57	.....	2.57
Alexandria, Mo., to Shenandoah, Iowa	238.70	.....	238.70
Total Number of Miles Operated	1,274.91	26.15	1,301.06

RECAPITULATION.

C. B. & Q.	2,781.36	121.11	2,902.47
B. & M.	4,068.96	67.41	4,136.07
Mo. Lines	1,274.91	26.15	1,301.06
Total	8,124.93	214.67	8,339.60
Less duplications	79.69	3.61	83.30
	8,045.24	211.06	8,256.30
Narrow Gauge	67.53	.....	67.53
Grand Total	8,112.77	211.06	8,323.83

Endorsed: Filed Dec. 27, 1905. Geo. H. Thummel, Clerk.

1102 EXHIBIT No. 67, C. W. P.

EXECUTIVE CHAMBER,
LINCOLN, NEB., *May* 2, 1904.

Pursuant to Section 86, Chapter 77, Article 1, Compiled Statutes of Nebr. 1903, the State Board of Equalization and Assessment convened with the following members present: Gov. John H. Mickey, President, Charles Weston, Auditor of Public Accounts, Peter Mortensen, State Treasurer, Geo. W. Marsh, Sec'y of State and Geo. D. Follmer, Com. P. L. and B.

The following representatives of the various railroads operating in the state of Nebr. were present: Messrs. Frank P. Crandon, Geo. F. Bidwell and Peter Whitney of the Chicago & Northwestern; J. C. Cooper and Jas. T. Maher of the Chicago, R. I. & P.; R. D. Pollard, Burlington and A. W. Scribner, Union Pacific, Mr. S. L. Highleyman, Missouri Pacific.

On motion a hearing for all the roads was set for May 11th and the Sec'y was instructed to issue notice accordingly. The Sec'y was instructed to notify and request such additional information as deemed necessary in arriving at the true value of Rail Road property.

On motion of the State Auditor the Sec'y was authorized to em-

ploy Assistance to compile the reports and such compensation shall be charged to the appropriation for supplies, etc.

It was moved and seconded that it was the sense of this Board that securities held or owned by Fraternal Ins. Companies as an
1103 investment of their reserve fund are not subject to taxation. The vote resulting as follows: Mickey, Yes; Weston, yes; Marsh, yes; Mortensen, no; Follmer, no. In explanation of his vote the State Treasurer offered the following: I am unable to comprehend that funds held by a fraternal insurance company as a reserve fund and invested in real estate mortgages or other taxable securities are within the meaning of our Constitution and the Statutes "Charitable Funds" and as such are nontaxable.

If this is held to be law such companies can also legally invest their funds in real estate, manufacturing, transportation, commercial and other similar enterprises and claim exemption under the same clause in our Constitution and section of our Statute. For the reason above stated I vote in favor of taxing such securities.

Mr. Follmer voted "No" for the reason that he was not clear as to their coming under the head of charity as used in Section 13 of the revenue laws.

The Board then took a recess until Tuesday at 1:30 o'clock.

TUESDAY, *May 3rd*—1.30 o'clock.

Board convened with all members present.

Mr. S. L. Highleyman representing the Mo. Pacific railway appeared before the Board and explained in detail the condition of said road in Nebr. and compared the assessment of their lines in this state with the assessment in other states. Mr. Chas. Hayden made a brief explanation of the condition of the property of the W. and S. F. Br. of the Great Northern Ry.

The Board took a recess until the call of the Chair.

LINCOLN, NEBR., *May 4th*, '04.

1104 State Board convened at call of the Prest. at 2:00 P. M. with the following members present: Gov. J. H. Mickey, Aud., Chas. Weston, Peter Mortensen, Tr. and Land Commissioner Follmer.

The following resolution was offered and unanimously adopted.

Resolution.

Resolved that in the judgment of the State Board of Equalization and Assessment, parsonages owned by a church and occupied by the minister or pastor of such church are used exclusively for religious purposes and are within the meaning of the Constitution and Statutes exempting such property from taxation.

The Board then took a recess until the call of the Chair.

MAY 5TH, 1904.

The Board convened on call of the President with the following members present: Gov. John H. Mickey, Pt., Chas. Weston, State Aud., Peter Mortensen, State Tr., Geo. W. Marsh, Sec'y State.

The matter of the assessment of the Omaha Bridge and Terminal Company was discussed and after due deliberation it was decided that under Sec. 86 of the law it is the duty of the State Board to value and assess said Omaha Bridge and Terminal Co., and the Sec'y was authorized to notify the management of the above company.

Board then took a recess till Monday, May 9th.

LINCOLN, *May 9th*, '04.

The State Board of Equalization and Assessment convened at the call of the Chair for the purpose of giving the representatives of the railroads a hearing.

The following members were present: Gov. John H. Mickey, President; Chas. Weston, Aud. Pub. Accounts; Peter Mortensen, State Tr.; Geo. W. Marsh, Sec'y State; Geo. D. Follmer, Com. P. L. and B.

Mr. R. D. Pollard representing the Burlington System opened with an editorial clipping from the Omaha Bee.

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Hon. E. Rosewater then took the floor and discussed the issue at great length.

Mr. R. D. Pollard then completed his argument and was followed by Atty. Brown of St. Joe, Mo., representing the St. Joe and Grand Island Ry. System.

On motion the Board took a recess till 9 o'clock Tuesday, May 10.

MAY 10TH, 1904.

The Board was called to order and Mr. Frank P. Crandon of the Chicago and N. W. Ry. Co. and Mr. Jas. T. Maher of the Chi. R. I. & P. Ry. Co. consumed the forenoon.

MAY 10TH—1:30 o'clock.

Mr. T. A. Polleys of the C. St. P. M. & O. Ry., Mr. A. W. Scribner of the Union Pacific Ry. and Mr. W. G. Ure of the Omaha Real Estate Exchange, each in turn made arguments.

Recess.

May 11th, Board met for an informal discussion and took a recess till 2:00 Friday 13th, pending the tabulation of Ry. property.

FRIDAY, *May 13th*, '04—2 p. m.

The Board convened as per recess of the 11th with the following members present: Gov. John H. Mickey, President; Peter Mortensen, State Tr.; Geo. D. Follmer, Com. P. L. & B.; Geo. W. Marsh, Sec'y State; Chas. Weston, State Auditor, Absent.

The session was to grant a hearing to the representatives of the private car companies.

Mr. Thos. H. Benton representing the Pullman Company made some statement relative to the return of the company. There being

no other representative present, Board took a recess until Monday 16th at 9 o'clock A. M.

1106 MONDAY, *May 16th.*

The Board convened as per recess of the 13th with the following members present: Gov. J. H. Mickey; Chas. Weston, A. P. A.; Peter Mortensen, State Tr.; Geo. D. Follmer, Com. P. L. and B.

It was unanimously decided that the Board should go into Executive Session to consider a method of proceedure in the valuation of Railway property. A recess was taken from 11:45 to 2 o'clock.

2 O'CLOCK.

Board convened with all members present. After a great deal of discussion as to different methods State Auditor Chas. Weston offered the following:

As a preliminary step to the ascertainment of the actual value of all property of railroads in this state required to be assessed for purposes of taxation, I move that we proceed to make an estimate of the actual value of the tangible property of the various railroads subject to assessment by this Board; and that said actual value so ascertained be taken as one of the factors in making up the total assessment of said roads. Upon a second of said above motion by Geo. W. Marsh, Sec. of State, the President put the motion and called for objections. State Tr. Mortensen requested time to prepare an amendment, and the same was granted. Board took a recess until 9 o'clock Tuesday the 17th.

TUESDAY, *May 17th*—9 o'clock.

The Board convened with members present.

State Treas. Mortensen offered the following amendment to the motion pending:

I move an amendment to Mr. Weston's motion. "That as required by the revenue laws of the state of Nebraska we, the State Board of Equalization and Assessment, having carefully examined the
1107 returns furnished this Board by the proper officers of the Nebraska Division of the Chicago and Northwestern Railway Company, do value the said Nebraska Division of the said Chicago and Northwestern railway, including its main tracks, side tracks, ware house tracks, road-bed, right of way and depot grounds and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling stocks, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating said railway in whole or in part, together with the money and credits, franchises and all other property of said railway company as pertaining to their said Division in this State used or held for the purpose of operating its railway in the sum of Three Million Seven Hundred Forty Five Thousand ($3,745,000.00) Dollars, the same being based on a valuation of Thirty Five Thousand ($35,000.00) per mile on the total mileage of 1070/08 miles in this state.

Mr. Geo. D. Follmer, Com. of P. L. & B. seconded the amendment. Said amendment being put was defeated by the following vote Ay; Mortensen and Follmer. Nay; Mickey, Weston and Marsh.

The original motion was then called for and was declared carried by the following vote: Ay; Mickey, Weston, Marsh and Follmer. Nay; Mortensen.

The Secretary was instructed to tabulate the entire tangible property as ret'd, for the benefit of the Board. A recess was then taken until Thursday at 9 o'clock.

MAY 19TH, 1904.

Board convened as per recess of the 17th with all members present.

Executive Session.

The tangible property of the different lines was considered.

The Board took recess until May 20th.

1108

MAY 20TH, 1904.

Board convened with all members present.

Executive Session.

The Board resumed the consideration of the tangible property of the railroads.

Recess till 9 o'clock May 21st.

MAY 21ST, 1904.

Board convened with all members present.

Executive Session.

Recess till Monday, May 23rd.

MONDAY, *May 23rd*, 1904.

Board convened with all members present except Mr. Land Comr. Follmer.

Mr. Jas. T. Mahr appeared in behalf of the Chi. R. I. & P. Ry. Co. and under oath furnished all the evidence relative to the property of the said C. R. I. & P. Ry. in his possession.

Recess till 2 o'clock, 23rd.

2 O CLOCK.

Board convened with all members present.

Mr. A. W. Scribner, Tax. Comr. and Mr. Stebbins, Accountant for the Auditor of the Union Pacific Railroad appeared and gave testimony under oath as to the property of said Union Pacific Rail Road Co. * * *

Recess 5/24.

5/24—9 o'clock.

The following motion was made by Peter Mortensen State Tr. and seconded — Secy. State. Geo. W. Marsh.

Motion.

I move that the Union Pacific Rail Road Company be requested to furnish the Board with a sworn statement giving the total
1109 capitalization of said Union Pacific R. R. Co., and the market value of the bonds and stocks on the first day of April, 1904.

First. The total mileage of said U. P. R. R. Co. proper.

Second. An itemized statement of the several bonds and stocks owned by said Co. for which they are legally entitled to receive credit on offset, in estimating the value of said Co. for assessment.

Third. The market value of all such bonds and stocks or the real value of same on the first day of April, 1904.

Fourth. A description and estimated value of such property which is subject to local taxation. Eliminating from said report the mileage including all bonds and stocks owned by its auxiliary roads—The Oregon Short Line R. R. and the Oregon R. R. and Navigation Company.

"Carried."

A recess was then taken till 9:30, may 25th, 1904.

MAY 25TH, 1904.

Board convened with all members present. R. W. McGinnis of the C. & N. W. R. R. was called before the Board for the purpose of information as to calling Mr. Frank P. Crandon, Tax. Comr., from Chicago.

MAY 25TH—Executive Session.

The following motion was made by State Tr. Mortensen and seconded by Land Com. Follmer.

Moved that the proper officer of the Mo. Pacific Railway be requested to furnish this Board with a sworn statement of the market value or if no market value, the actual value of the following holdings. Viz. $25,733,790 of the capitol stock of the St. Louis Iron Mountain and Southern Railway: also the same information
1110 as to, $14,800,000 of the common and $7,300,000 of the preferred stock of the Denver & Rio Grande Railway: also the market value of $77,802,875 of the capital stock of said company on the first day of April, 1904: also the value of $54,012,000 bonded indebtedness.

Carried.

Executive Session.

Recess till 2 o'clock.

2 O'CLOCK P. M.—5/25.

Board convened with all members present and went into executive session. Recess till 9 o'clock, May 26th.

MAY 26TH—9 o'clock.

Board convened with all members present.

Executive Session.

Recess till 2 o'clock.

MAY 26TH—2 p. m.

Board convened with all members present.

Hon. Wm. G. Sears was present and made many suggestions and remarks relative to the intent of the drafters and framers of the New Revenue Act, after which the Board went into executive session.

Recess until 9:30 May 27th.

MAY 27TH, 1904.

Board convened with all members present. The Secy. was instructed to request the following information from the B & M Ry Co. viz., a sworn statement by the proper officer of the C B & Q R R Co as to the following information: The true value of the stock of the C B & Q Ry Co April 1st, 1904; the true value of the C B & Q stock prior to the "Merger;" The true value of the C B & Q stock to the Northern Securities Co.; the true value of the holdings of the C B & Q R R in the Sinking Fund."

Recess till Sat., May 28th, 9:30.

1111

MAY 28TH, 1904.

Board convened as per recess with all members present.

Mr. R. D. Pollard, Tax Comr. of the B & M who was requested to appear and furnish required information gave such necessary information as could be obtained.

Executive Session.

Recess till 9:30 A. M. June 1st.

JUNE 1ST, 1904.

Recess continued account of the death of Hon. H. A. Babcock, Deputy State Tr.

WEDNESDAY, *June 1st*, 1904.

Board convened with all members present and immediately went into executive session.

Recess till 10 O'clock June 2nd.

JUNE 2ND.

Board convened with all members present. Board took action on the property of Doane College ruling that it is exempt from taxation.

Mr. Jas T. Maher, Tax comr. of the C R I & P R R Co appeared and furnished certain information previously requested.

Executive Session.

Recess.

SATURDAY, *June 4th.*

Board convened with all members present. A recess was taken till Tuesday June 7th *and* 9 o'clock, and the Secy. was instructed to give notice to the public that an open session of the S. B. of E. & A. would be held Thursday June 19th 1904 at 2 o'clock P. M.

TUESDAY, *June 7th,* 1904.

Board convened as per recess with all members present.

Mr. A. W. Scribner appeared as requested to furnish additional information as to the value of the property of the Union Pacific Railway Company.

Messrs. White and Crandon for the C & N. W. Railway requested time until Saturday June 11th 1904. Recess till June 8th 1904.

1112 WEDNESDAY, *June 8th,* 1904—9 o'clock.

Board convened with all members present as per recess of the 7th. An informal discussion of Railroad values on stock and bond basis was entered into.

Recess till 2 P. M.

2 P. M.

Informal discussion of Railway properties was resumed. A recess was taken till Thursday June 9th at 2 P. M.

THURSDAY, *June 9th,* 1904.

Board met pursuant to recess of June 8th with all members present; State Auditor Chas. Weston as Sec'y. A statement of the stocks and bonds of the Union Pacific was received and filed as a part of the report of said company, and Mr. Scribner was questioned in detail in regard to same. Mr. Scribner also presented a statement of segregated net earnings which was placed on file.

Mr. R. D. Pollard of the B & M and Mr. Polleys of the C St P M & O made statements relative to the assessments of their respective lines.

Executive Session.

A recess was taken until 9 A. M. Sat. June 11th 1904.

JUNE 11TH, 1904.

Board convened with all members present except Secy. of State Marsh. Messrs. B. F. White and Frank P. Crandon, Att'y and tax Commr. for the Chicago and N. W. Railway appeared and made extensive arguments and affidavits on assessment of railway property.

Mr. R. D. Pollard appeared and presented statements and affidavits on behalf of the B & M which were placed on file. Recess till 2: o'clock.

2 O'CLOCK P. M.

Board convened with all members present except Secy. of State Marsh.

1113 Mr. S. L. Highleyman, Tax Comr. of the Mo. Pacific, appeared in behalf of said Rail Road.

Recess till Monday June 13th.

JUNE 13TH, 1904.

Board convened with all members present. Hon. Chas. F. Manderson appeared in behalf of the B & M Ry Co.

Recess till 2 P. M.

2 P. M.

Executive Session.

Recess till 8 o'clock June 14th, 1904.

Board convened with all members present.

In execution session the valuation of the Private Car Co. property was taken up and on motion the values were put on different classes of cars as follows, viz.:

100	miles (d) Refrigerator	$900	30 M D		
50	" " Furniture	750	Tank	$1,200	
100	" " Box Cars..	700	100 M D		
150	" " Fruit Cars.	600	Palace Stock.....	750	
			75 M D		
			Flat Cars.....	75	

It was moved by Chas. Weston that the value of Pullman Palace Cars be placed at $11,802.31 and Tourist $6,983.62. Seconded by Geo. W. Marsh Secretary of State. State Tr. Mortensen offered an amendment to make standard cars $15000 each and tourist $8000. Amendment carried. Original motion lost.

Recess till 9. 6/15/04.

JUNE 15TH, '04.

Board convened with all members present and went into executive session.

Recess till 2: o'clock.

2 O'CLOCK.

Executive Session.

All present.

Recess till 9 6/16.

JUNE 16TH, 1904—9 a. m.

Board convened with all members present.

Moved by State Auditor Weston and seconded by Secre-
1114 tary of State Marsh that the Rail Roads of this State be assessed on the unit system without distribution as between main line and branches—lost. Aye; Weston and Marsh. No; Mickey, Mortensen, Follmer.

Recess till 2 o'clock P. M.

2 O'CLOCK P. M.

Board convened with all members present. The following resolution was offered by State Tr. Mortensen and accepted by the Board.

Resolution.

Resolved that we the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads of the State of Nebraska for the purpose of taxation, and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur tracks, ware house track, road bed, right of way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchise and all other property of said railroad companies; and having taken into consideration the gross and net earnings of said roads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system of road and the market value thereof and the total amount of secured and unsecured indebtedness, do hereby ascertain and fix for purposes of taxation the full actual value, the average value per mile, and the assessable value per mile of the several roads as follows:

1115	Full actual value.	Average val. per mile.	Assessment val. per mile.
Union Pacific System	$52 878 049		
Union Pacific Main Line		$80 000	$16 000
" O & R V Br		32 500	6 500
Kearney Br		23 850	4 770
Burlington System	101 184 996 75		
Atchison & Nebr		50 000	10 000
B & M Main Line		77 350	15 470
C & N W		25 000	5 000
G I & W C		32 500	6 500
K C & Omaha		25 000	5 000
Lincoln & B H		27 500	5 500
Lincoln & N W		32 500	6 500
Nebr. Railway		40 000	8 000
Nebr & Col		30 000	6 000
Nebr Wyo & W		22 500	4 500
Omaha & N P		42 500	8 500
Omaha & S W		45 175	9 035
Oxford & Kan		20 000	4 000
Rep Valley & Wyoming		20 000	4 000
" " K & S W		20 000	4 000
Mo. Pacific System	10 968 438		
" " Main Line		42 000	8 400
" " Lincoln Br		40 000	8 000
" " Weeping W Br		40 000	8 000
" " Spg & Pap. Brc		14 100	2 820
" " Crete Br		32 500	6 500
Kan City & N W	502 550	25 000	5 000
Pacific Ry in Nebr	1 424 400	20 000	5 000
C St. P M & O	11 524 300	42 500	8 500
Chi & N W	34 663 200	32 500	6 500
Wilmar & S F Br G N	2 564 200	20 000	4 000
St Joe & Gr Island	3 649 750	32 500	6 500
Chi R I & P	10 426 330		
" " Main Line		49 000	9 800
St. Joe Branch		40 000	8 000
Nelson "		30 000	6 000
Omaha B & Ter. Co.	500 000	Total	100 000
Mason City & Ft	124 175		

And the Secretary of the Board is hereby authorized and instructed to certify to the proper officials of each county the assessed value per mile of each line *of each line* or road as above fixed pursuant to statute in such case made and provided.

The Board adjourned to meet at the call of the Sec'y.

JOHN H. MICKEY, *President.*
GEO. D. BENNETT, *Sec'y.*

June 27th 1904.

The Board convened with the following members present:

1116 Gov. J. H. Mickey, President.
Chas. Weston, Aud. P. A.
Peter Mortensen State Tr.

Mr. Auditor Weston moved that the Board reconsider
Made the Assessment of the Pullman Palace Car Co. State
June 14th Treasurer Mortensen seconded the motion and it
/04 carried.

It was then moved by State Auditor Weston that the Standard cars be listed at $11,802.31 and Tourist Cars at $6,983.62 each and assessed at one fifth the actual value. Seconded by Peter Mortensen—Carried.

Board adjourned to meet at the call of the Secretary.

GEO. D. BENNETT, *Sec'y.*

JOHN H. MICKEY, *President.*

Executive Chamber.

LINCOLN, NEBR., *July 18th,* 1904—2 p. m.

Pursuant to Section #130, Chapter 77, Article 1, Compiled Statutes of Nebraska for 1903, The State Board of Equalization and Assessment convened with the following members present: Gov. John H. Mickey, President; Peter Mortensen, State Tr., and Geo. W. Marsh, Sec'y of State.

Representatives of the following counties were present: Red Willow, Seward, Butler and Cass. Furnas County made a request of the Sec'y for a hearing later.

A recess was taken till Tuesday July 19th.

JULY 19TH, '04—10 o'clock a. m.

Board convened with the following members present:
J. H. Mickey, Pres.; Peter Mortensen, State Tr.; Geo. W. Marsh, S. of S.

Com'r Williamson of Boone County and Co. Assessor
1117 Hadly appeared before the Board.
Recess till 2 o'clock.

2 O'CLOCK P. M.

Board convened as per recess with all members present, except State Auditor Weston and Land Commissioner Follmer.

Mr. T. A. Polleys came before the Board and was granted a hearing on Wednesday July 27th. A recess was taken till July 20th at 9 o'clock.

JULY 20TH, 1904.

Board convened as per recess with all members present—Executive session.

Recess till 2 o'clock P. M.

2 O'CLOCK—20TH.

Board convened with all members present. Co. Assessor Burress Co. Assessor Reed of Johnson and Douglas Counties and Co. Att'y Sundean of Saunders Co. made explanation in behalf of their respective counties.

A recess was taken till 10 o'clock A. M. July 21st /04.

JULY 21ST, /04.

Board convened with the following members present: Gov. J. H. Mickey President; Chas. Weston, State Aud.; Peter Mortensen, State Tr.

Executive Session.

Co. Cl'k Plasters of Gage County appeared before the Board.

Recess till 2 o'clock P. M.

Board convened as per recess with all members present except Secretary of State Marsh. Executive Session.

Recess till July 22nd at 10 o'clock A. M.

JULY 22ND, 1904.

Board convened with the following members present:

Gov. John H. Mickey, P't; Chas. Weston and Peter Mortensen. Executive Session.

Recess till 2 o'clock.

1118 2 O'CLOCK.

Board convened with the following members present:

Gov. John H. Mickey, Pr.; Chas. Weston and Peter Mortensen. Executive Session.

Recess till 10 o'clock July 25th 04.

MONDAY, *July 25th*, 1904.

Board convened with the following members present: Gov. John H. Mickey, Pres't, Chas. Weston and Peter Mortensen. Executive Session.

Recess till 2 o'clock P. M.

2 O'CLOCK P. M.

Board convened as per recess with the following members present: Gov. J. H. Mickey, P't, Chas. Weston, Peter Mortensen and Geo. W. Marsh.

Knox County was represented by County Att'y Funk and Co. Assessor Baker. The following railway companies filed protests with

the Secy. and the same are a part of the records of the office: B & M, C & N W, U P—

A recess was taken until Tuesday July 26th at 10 o'clock A. M.

TUESDAY, *July 26th*, 1904.

Board convened with the following members present: Gov. J. H. Mickey, Pr., Chas. Weston and Geo. D. Follmer. Also Peter Mortensen.

Representatives from Webster, Nemaha, Douglas and other counties appeared before the Board with arguments in favor of their respective counties. Recess till 2 o'clock P. M.

Board convened as per recess with all members present, and hearings of the representatives were continued.

Recess till 10 o'clock Wednesday July 27th.

WEDNESDAY, *July 27th*, 1904.

Board convened with the following members present:

Gov. John H. Mickey, P't, Peter Mortensen, Geo. W. Marsh and Geo. D. Follmer. Representatives from Nemaha, Cass, Otoe, Holt and other counties appeared offering arguments in favor of
1119 their respective counties.

Recess until 2 o'clock.

2 O'CLOCK, JULY 27TH.

Board convened with all members present. Representatives from Butler and Cedar Counties appeared before the Board, also Tax Com'r Polleys, Assessor Reed and County Att'y Sundean made arguments before the Board.

Moved and seconded that the public hearings close with this session. Lost.

Moved and seconded that all hearings be closed at 3 o'clock July 28th 1904. Carried.

Recess till 9 o'clock July 28th 1904.

JULY 28TH, 1904—9 o'clock.

Board convened with the following members present: Gov. John H. Mickey, P't, Chas. Weston, Peter Mortensen and Geo. D. Follmer. Executive Session. Recess till 2 o'clock.

Board convened and listened to statements relative to the value of property in Johnson County. Executive Session.

Recess till *9 o'clock* July 29th at 9:30 A. M.

FRIDAY, *July 29th*, 1904—9:30 a. m.

Board convened with all members present. Executive Session.

Recess till 2 o'clock P. M.

Board convened with all members present. Executive Session.

Recess till 10 o'clock 7/30/04.

SATURDAY, *July 30th*, 1904.

Board convened with all members present. Minutes of all meetings of State Board of Equalization and Assessment covering dates

from Jan'y 18th 1904 to July 17th 1904 inclusive were read and approved.

Recess till 2 o'clock P. M.

Board convened as per recess with all members present.

1120 Messrs. C. H. Rudge, W. D. Fitzgerald, J. R. C. Miller and Sec'y Rewick were called before the Board for the purpose of gaining information as to Co. Assessor Reed's statements as to his valuation of merchandise in Douglas County. Each of the above stated that Assessor Reed had informed them that he was listing Mdse. at from 50 to 60 per cent. of the actual value.

A recess was taken until Monday Aug. 1st at 2 o'clock P. M.

MONDAY, *August 1st*, 1904—(2 p. m.)

Board convened with the following members present: Gov. John H. Mickey, P't, Chas Weston, Peter Mortensen and Geo. W. Marsh

Representatives from Lancaster and Douglas Counties were present. Moved and seconded that the following counties be increased as follows: Mortensen—Weston.

Boone	5%	Box Butte	10%
Boyd	5%	Burt	5%
Cheyenne	10%	Dakota	10%
Deuel	10%	Gage	5%
Howard	5%	Johnson	5%
Kearney	2%	Keith	10%
Kimball	10%	Knox	5%
Lincoln	10%	Nemaha	5%
Pawnee	5%	Perkins	10%
Pierce	5%	Richardson	10%
Rock	5%	Sherman	10%
Stanton	5%	York	5%

Carried.

On motion the following levy was made:

For State Gen'l Fund	4½ Mills.
For State School Fund	½ Mill
For State University Fund	1 Mill

Board adjourned to meet at the call of the President or Secretary.

JOHN H. MICKEY, *President.*
GEO. D. BENNETT, *Sec'y.*

1121–1173 I hereby certify this to be a true copy of the record and proceedings of the State Board of Equalization and Assessment, sitting for the purpose of valuing and assessing railroad property within the State of Nebraska, for the year 1904.

(Signed) GEO. D. BENNETT,
Secretary State Board of Equalization and Assessment.

Aug. 1st, 1905.

Endorsed: Certified proceedings of State Board of Equalization and Assessment, State of Nebraska, for year 1904.

End of Exhibit No. 67, C. W. P.

1174 Volume No. 3.

In the Circuit Court of the United States within and for the District of Nebraska.

No. 79, Docket "W."

UNION PACIFIC RAILROAD COMPANY, Complainant,
vs.
ROBERT O. FINK, Treasurer of Douglas Co., Nebraska, *et al.*, Defendants.

Testimony taken on behalf of the Complainant, Union Pacific Railroad Company, under the 67th Rule of the Supreme Court, as amended, pursuant to agreement between the parties, beginning September 21st, 1905, in Court Room No. 1, in Federal Building at Omaha, Nebraska, before me, Charles W. Pearsall, an Examiner in Chancery of the United States Circuit Court, for the District of Nebraska.

Present: John N. Baldwin, Solicitor for Complainant; Norris Brown, Attorney General; W. W. Slabaugh, County Attorney, Douglas Co., Nebr., Solicitors for Defendants.

Stipulation.

It is hereby agreed and stipulated that the testimony may be taken in shorthand by Charles W. Pearsall, the Examiner before whom this testimony is being taken, and by him extended into longhand.

1175 OMAHA, NEBRASKA, *September 21st*, 1905—
10:00 o'clock a. m.

Pursuant to adjournment, all parties met at Court Room No. 1, in the Federal Building in Omaha, Douglas County, Nebraska, and the following proceedings were had:

When counsel appeared for further examination of witnesses on this day, the witness George D. Bennett, who had heretofore been duly subpœnaed to appear at this time, he being Secretary of the State Board of Equalization and Assessment, was not present and could not be, on account of the death of his father; thereupon, it was

Agreed by the parties hereto that if the witness George D. Bennett were present that he would testify that the paper marked Exhibit 74 is a paper containing a statement of the value of the tangible property of the Union Pacific Railroad Company, that all of said Exhibit, writing and figures is in said Bennett's handwriting, and that he, the said Bennett, wrote them, and that he, the said Bennett sent said statement to Mr. A. W. Scribner, Tax Commissioner of the Union Pacific Railroad Company, at the request of said A. W. Scribner. It is further

Agreed by the parties that Exhibit 74 correctly states the estimate

of the actual value of the tangible property of the Union Pacific Railroad Company made by the said State Board of Equalization and Assessment for the year 1904, in accordance with, and for the purposes named in the resolution offered by Auditor Charles Weston on the 16th day of May, 1904, and afterwards adopted by said Board. It is further

1176 Agreed by the parties that if the witness George D. Bennett were present that he would testify that Exhibit 75 is in his handwriting, and that the figures thereon made were made by him at the request of the State Board of Equalization and Assessment, but what action or determination, with respect to the figures so made by him, was taken or made by said State Board, the witness does not pretend to know.

Governor JOHN H. MICKEY, a witness on the part of the Complainant, is here called and sworn. Being examined in chief by Mr. John N. Baldwin, he testified as follows:

Q. You may state your full name to the reporter.
A. John H. Mickey.
Q. You are Governor of the State of Nebraska?
A. I am.
Q. How long have you been Governor?
A. Since January 8th, I think, 1903; I have forgotten just the date of the inauguration.
Q. You were Governor of the State of Nebraska in the year 1903?
A. Yes sir.
Q. And you were a member of the Board of Assessment and Equalization that year.
A. I am.
Q. You were in 1903?
A. Yes sir; I was.
Q. Who were the other members of the Board, Governor?
A. Charles Weston, Auditor, George W. Marsh, Secretary of State, George D. Follmer, Land Commissioner and Peter Mortensen,
1177 Treasurer, with myself.
Q. No; I am asking you about 1903.
A. That is what I am talking about, 1903.
Q. You made your assessment with five in 1904.
A. You asked who the members of the Board were in 1903?
Q. 1903, yes.
A. Well, there was myself——
The ATTORNEY GENERAL: Mr. Follmer was not a member of the Board then, was he?
The WITNESS: Of course he was.
Q. The men you have mentioned now, were members of the Board of Equalization and Assessment in 1903?
A. Yes sir.
Q. Who were the members of the Board for the assessment of 1904?
A. The same.

Q. Then I understand you that there was the same personnel of the Board in 1904 to make the assessment that there was in 1903?

A. There was.

Q. There were only three members of the Board prior to the enactment of what was called the New Revenue Law, prior to the going into effect of the New Revenue Law?

A. I don't know as I get your thought.

Q. Well, before the enactment of the new revenue law, how many members of the State Board of Equalization were there?

A. Well; I guess there were only three, and there were three members in 1903.

Q. Well, what is your best recollection and judgment about that?

A. Well, then, I should have to change that and say that it was the Governor and Auditor——

1178 Note by the Examiner.—At this point some remark was made by the State Treasurer Mortensen, upon which Mr. Baldwin objected as follows:

Mr. BALDWIN: You can note in this record that counsel for complainant objects to the interruption of this examination on the part of the Treasurer of this state, such interruption being audible, so that it can be heard by witness and counsel.

A. (continued). Well, the statute says who were the Board, and I call to mind now that Mr. Mortensen and Mr. Weston and myself in 1903 were the assessment board, and in 1904 two were added under the new law.

Q. That was the Land Commissioner and the Secretary of State, What is the Land Commissioner's name, Governor?

A. George D. Follmer, and the Secretary of State was George W. Marsh.

Q. Therefore, on the new board of 1904, there were of the old board yourself, Treasurer Mortensen and Auditor Weston?

A. Yes.

Q. You then first participated in the work of assessment of railroad property in the year 1903?

A. Yes sir.

Q. So that prior to 1904, your experience had been limited to making one assessment of the railroad properties of the state?

A. I had performed that duty but once and that was in 1903.

Q. For the purpose of refreshing your recollection, and as a basis for questions which I shall hereafter propound to you, I call your attention to the fact that the total valuation of the Union

1179 Pacific Railroad properties in this state was fixed by your board at $6,323,332.00—you remember that?

A. I don't remember the figures, but perhaps that is true, yes. The records would show what it is.

Q. What was your duty under the law of 1905 with respect to ascertaining the value of the railroad properties of this state?

The ATTORNEY GENERAL: We object to this question as calling for a conclusion.

Q. That is to say, did you consider it your duty to ascertain the full value of the properties of the railroads of the state?

A. My judgment is that the Board gave it meager consideration under the old law, for the reason that the new law specified; which had been enacted a more definte way to ascertain the value, to prescribe the value of railroad property.

Q. Governor, you don't mean to say when you assess- property in 1903 that the new law had been enacted?

A. Yes sir.

Q. Well then, I will ask you this question. When you made the assessment of 1903, did you follow the new law as enacted, or did you follow the law which had been on the statutes theretofore.

The ATTORNEY GENERAL: The complainants object to this as being wholly imaterial.

A. Well, I think I could answer that squarely that we followed former precedent perhaps largely.

Q. Well, under the law, it was your duty to find the full actual value of the property, wasn't it?

A. The law provided that all property—the old law—that all property should be listed at its actual value, railroads and all.

1180 Q. But that wasn't done?

A. No sir; it hadn't been done for years.

Q. Not only with regard to railroad property, but with regard to all other property?

A. I think that is largely true except banking perhaps; there were some articles that were assessed——

Q. Well, take lands and live stock and real estate and lots and merchandise; it never had been pretended, had it, that they were assessed at their actual value?

A. My judgment would be that we were all tax shirkers at that time as to the valuation of property, or nearly all.

Q. Isn't it a fact that while there was no limitation or restruction or specification in the statutes as to any per cent. that should be taken, as to the actual value, for the assessable value, that property was not assessed at its actual value at all?

A. Which property do you mean?

Q. Well, all property, except as you say, possibly banking.

A. Well, it varied a good deal. In Douglas county all land was assessed at fourteen dollars and something an acre.

Q. Well, I am talking now about—of course, we can't go into specifications of that kind, because that would take forever. I am asking on the general proposition, you know as a citizen, a taxpayer and a public man, that prior to 1904, although the law required property to be assessed at its actual value, that it was not assessed at its actual value?

A. Generally speaking, I think that is true, but there was some exception.

1181 Q. But as a rule property was assessed from one-tenth to one-fifteenth of its actual value?

A. No; I would say from one-fourth to one-twentieth.

Q. You don't think for a moment—you didn't think for a moment, did you, in 1903, that $6,323,332.00 was the full actual value of the properties of the Union Pacific in the State of Nebraska, did you?

A. Well, we thought this, that it was a fair assessment of the road compared with other property.

Q. But you didn't for a moment consider that was the full actual value of the property?

A. And my recollection is that the roads said that that was fair, in accordance with the valuation of other property—the agents of the roads——

Q. But what did you know of it?

A. And that was mutually agreed on as being fair, compared with other property, but not of course understood to be the full value of the road.

Q. Why didn't you assess it at its full value as the law required.

The ATTORNEY GENERAL: The defendants object to this as being wholly immaterial.

A. As I said a while ago, the precedent had been established and we value that property—

Q. What precedent?

A. Well, about what property ought to be assessed at. Everybody was low, and that principle was caried out, and that was also the talk with the railroad men, that it was fair; that is to say, they had said "other property was assessed low, and we want ours assessed low."

1182 Q. You found other property to be assessed low, didn't you?

A. Not that year, because the assessment had not been made.

Q. You found that theretofore the practice and custom of assessing lands, for instance, not at their actual value, but as you say, from one fourth to one twentieth, that custom had prevailed?

A. Well, some property——

Q. I speak of lands. That is one of the large items of property in this state, and I speak of the year 1903, and before that time.

A. Well, in Douglas County the land, I think was assesed at one-fourth of the value, while in Polk county it was assessed at about one-fifteenth; that was in 1903; that was after the railroad assessment had been made.

Q. For instance, take your own county, for not only 1903, but for some years prior thereto, you would know that personally, and from your general knowledge, being acquainted with the state as you were, that lands as a rule were assessed at one-fourth to one-twentieth of their value?

A. Well, I can answer that I don't think that is true in our own county.

Q. Well, what were the lands assessed at?

A. Well, the lands in years before that were assessed at perhaps one-fifth of their value, in the hard times.

Q. In the State of Nebraska?

A. In Polk county, yes sir. The lands became valuable in a few years, and they were assessed at perhaps one-fifteenth in 1903; they were assessed at $3.17 an acre, and the testimony before the board in 1903, by expert land examiners, was that the lands were worth about $45 an acre on the average. Prior to that there was not that
1183 much difference.

Q. Well, you have no doubt observed a striking disparity between the valuation of the Union Pacific property in 1903 and the valuation put on it in 1904?

A. I think perhaps I have looked it over, yes. Judging by its net earnings, I should judge there was considerable difference.

Q. Considerable of an increase?

A. Yes sir.

Q. Over 1903?

A. Yes, there was $1100.00 differences between 1903—no; I mean between 1904 and 1905.

Q. Well, we are talking about 1904, now. We will get to 1905 another time. I am talking about 1904 and 1903.

A. I don't remember what the net earnings were in 1903. I would have to look at the reports. I presume I have looked at them in the Auditor's office.

Q. I have them here, and will call your attention to them later, but I am now talking in a general way. I will call your attention to it in a specific question: In 1904 you acted under the new revenue law?

A. Yes sir. The assessment was made——

Q. Which, as you understood it to mean, required that you should find the actual value and then for assessment value it at one-fifth?

A. Yes sir.

Q. You justify your course and conduct in 1903 in the assessment of railroads that year on the ground that to be uniform in the assessment, as other properties were not assessed at their actual value, you could not assess the railroads at their actual value?

1184 A. My recollection is, Mr. Baldwin, that the roads contended in 1903 that they were paying about one-seventh of all the taxes in the state, and they thought that was their full share, and protested against any increase, or much increase of valuation, and the board acquiesced in that view so far as the assessment was compared with other property.

Q. You did not investigate the values?

A. Yes we did, but we didn't have the evidence before us in 1903 that we had in 1904, under the new law.

Q. You did not?

A. No sir; that is, the reports.

Q. The Board?

A. The reports and filings that the new law required.

Q. Well, we will come to that; I understand you to say you had additional information for the assessment in 1904 as to the amount paid by the Union Pacific?

A. No; I didn't say paid by the Union Pacific Railroad Company, but by study of the question. We looked at it.

Q. You don't mean to swear that in the discharge of your duty in 1903 that you did it because the railroads insisted that they paid one-seventh of the taxes, that therefore they should only be assessed on that ratio and basis?

A. No sir. I simply say the roads made that statement.

Q. You did investigate it?

A. Yes; we studied the question.

Q. And when you did investigate the question you found that other property throughout the state lands and merchandise and other large properties were not assessed at their actual value didn't you?

1185 A. We didn't have the information and knowledge about the real value of the roads in 1903 that we did in 1904, that is what I mean to testify.

Q. Please answer this question. You do not mean to swear that in 1903 you made the assessment of the railroads and, say particularly of the Union Pacific because of the contention of the representatives of the railroads that, as the railroads paid one-seventh of the taxes of the state, that that should be the basis to make the assessment on?

A. I do not mean to say that that controlled us in the assessment, but I do mean to say that they did give us the information.

Q. But you did not make the assessment on that information?

A. No, we made the assessment on our best judgment of what railroads should be assessed compared with other property and according to precedent established by common custom which was and had been for years a violation of the strict letter of the law in relation to nearly all property of the state.

Q. And you found at that time, and for years that none of the property in the state of Nebraska, I mean speaking in a general sense, had been assessed any more than from one fourth to one-twentieth of its value?

A. I think that is true. The board in finding that condition, however, under the old law, could vary that.

Q. But I am talking about the time you made your assessment. Of course, you took that into consideration?

A. How is that?

Q. Of course, in making up your judgment in 1903, you took that into consideration, that property of all kinds had been assessed at from one-fourth to one-twentieth of its value?

1186 A. My recollection is that the board came to this conclusion, that custom long established, and the new revenue law having been enacted at that time, that the assessment better continue as it had, and we would perhaps get it nearer fair that way, and w-it until the application of the new law, and then we could revise the assessment.

Q. Well, but of course, you had knowledge, didn't you of the fact that the assessment of other properties, as you have already testified to, in the state, was made at from one-fourth to one-twentieth of the actual value?

Q. Well, the practice had been in our county, in assessing banks,

first one-fifth of the value was taken by the assessors, and then one-sixth and in many places in the county, that was followed, and we considered the same rule ought to apply to railroads.

Q. Now, Governor, I don't want to confine it to your county, now just answer this question once and for all, did you as Governor of the state of Nebraska, in making the assessment of 1903 consider the fact that as all other properties, such as lands and merchandise and monies and credits, and live stock, were not assessed any more than from one-fourth to one-twentieth of its value, that to be uniform, the same rule should be applied to the assessment of railroads?

A. We did not consider that so much. We assessed the railroads under the precedent at about what they had been assessed at before.

Q. And you did that without investigation?

A. We went into it all we could; we got all the information we could get.

1187 Q. Do you mean to swear now that that was not considered, the facts I have enumerated in my prior question were not considered by the Board in determining the value of the railroads in 1903?

A. We considered that the assessment made then was fair, compared with other property.

Q. That is not an answer to my question, Governor. You considered, did you not, the fact that other property in the state generally had been assessed, the properties I have heretofore enumerated, at from one-fourth to one-twentieth of their value?

A. The other property had not been assessed in 1903, when we assessed the railroads.

Q. Oh, well; you know what I mean. Of course, it wasn't assessed for that year, but it had been for years before that and that was shown to the board?

A. Repeat your question, Mr. Baldwin.

Q. I will put it once more; I don't want to quibble on this. You assessed the Union Pacific railroad in 1903 at $6,323,332, and you knew that was not the actual value, didn't you; you knew it was worth more than that in this state, didn't you? Will you answer that question?

A. Yes; I will answer that yes. I would like to add in connection with that that it was fair in connection with other property.

Q. That is all right, fair in connection with other property?

A. Yes.

Q. And that was because other property—once and for all——

A. And I would like to add further, to be fair, that we felt that in the next year, under the new law, a readjustment of the assessment values would be made, and the Board was right, and no wrong done.

1188 Q. And when you say in comparison with other property, it was because you had a knowledge that other property, such as I have heretofore enumerated in these questions and interrogatories, was assessed at from one-fourth to one-twentieth of its value?

A. I said from one-fourth to one-fifteenth.

Q. One-fourth to one-fifteenth?

A. Yes sir; I don't think there is any doubt but what that condition existed under the old law.

Q. When you got to the assessment of 1904, you found the actual value of the railroads, didn't you?

A. We endeavored to.

Q. Well, that was your purpose?

A. Yes sir; under the law, it was our duty under the law.

Q. That was your duty and your purpose?

A. Yes sir.

Q. That was what you tried to do?

A. Yes sir.

Q. That is what you did do?

A. The findings of the Board were that, yes.

Q. Then you took one-fifth for the assessable value?

A. Yes sir.

Q. What was your sources of information as to the value of the railroads in 1904?

A. The statements and filings required by law, by the different corporations, and other published reports and certificates, showing the value of the stocks and bonds and net earnings of the systems separately.

Q. You state of the values of the stocks and bonds—you
1189 had a statement from Mr. Scribner before you as to the value of the stocks and bonds, did you not?

A. He gave us some information. He was indefinite about some, and promised to ascertain more facts as to that value, by going to New York and obtaining them for us.

Q. What other information did you have before your Board as to the value of stocks and bonds?

A. Well, I think that covers all. If you want me to itemize, I might say Poor's Manual and "Drew & Company's Financial Statements" showing the values of stocks and bonds.

Q. Will you state wherein any evidence that you had before you, in any way, shape, manner or form, differed as to the value of the stocks and bonds of the Union Pacific from that made by Mr. Scribner, either as to the amount of the issue or the value?

A. My recollection is that the totals, the aggregate, as given by them compared with the others were very near the same.

Q. Don't you know Governor, that there wasn't any difference in the statement of the amount or the value?

A. Well, it has been a good while since I looked at the figures. My judgment is that they corroborate each other very nearly. I might say that I haven't gone over these since I was subpœnaed and expected to be here.

Q. I do not expect you to be exact, all I can ask you on these things is as to your recollection.

A. I speak from memory.

Q. Yes, I understand that, that you have stated it as correctly as you can from your memory.

A. Yes sir.

Q. What did you understand to be the tangible property of the Union Pacific railroad company?

1190 A. I don't know as I could enumerate it all. It would be the right of way, the road bed, the ties and the iron, the depots and the equipments of the road of various kinds, also the material, perhaps, that was on hand. The reports, I think, would cover that, as to the items, and the law specifies what it is.

Q. Well, the amount, variety, description, list enumeration, specification and value of the tangible property of the Union Pacific railroad company was put before the board in evidence by Mr. Scribner, wasn't it?

A. I think it was.

Q. He filed, in accordance with the law, with the Secretary, a schedule?

A. I think, before the Board. That was discussed in his presence, and he filed a statement.

Q. Well, he had to file a statement under the law?

A. Yes sir; I think so.

Q. Well, you know that. That was the only way you had to get a schedule?

A. I didn't know whether you had reference to those filed under the law, or the others filed afterwards.

Q. I mean under the law; those that were filed under the law?

A. Yes sir; set forth and sworn to.

Q. What other evidence did the board have as to the amount, qualification, specification, description and value of the tangible property of the Union Pacific other than the sworn statement of Mr. Scribner?

A. I suppose none other, except it would be the personal knowledge of the members of the board.

Q. He gave you the number of depots, didn't he?

1191 A. Yes sir.

Q. The numbers of miles of rails?

A. Yes sir.

Q. The amount of the rolling stock?

A. Yes sir.

Q. And the equipment?

A. Yes sir.

Q. Buildings?

A. Yes sir.

Q. Tool houses?

A. Yes sir.

Q. Picks, shovels, and everything?

A. Yes sir.

Q. Nobody else testified before you, did they?

A. No Sir; but I think the Board went over the values placed on it.

Q. Well, that is all right, but I am talking about an enumeration of the articles.

A. I don't think the board asked for any other information on that.

Q. The board not only did not ask, but did not get any other?

A. Well, they supposed that was a true statement.
Q. Yes; they assumed it was a true statement.
A. Yes sir.
Q. So, that on the question as to the evidence of the amount, quality and description of the tangible property of the Union Pacific railroad, the board had before it only the uncontradicted sworn testimony of Mr. Scribner?
A. Well, I think we had this information in connection
1192 with the depots, that they were listed by the amounts they were insured for.
Q. Well, I leave out values?
A. Oh; I thought you had reference to values.
Q. Well, for the purposes of this question, leave out the question of value, and my question is that on the question as to the evidence of the amount, quality and description of the tangible property of the Union Pacific railroad, the board had before it only the uncontradicted sworn testimony of Mr. Scribner?
A. Well, I should answer, applying to ties, and the weight of rails, and the number of depots and material on hand, and all other property which was itemized, that that was the evidence we had, and we accepted that.
Q. I will ask you if you had any other evidence?
A. I think I answered a while ago that we had our own personal knowledge, perhaps.
Q. That for instance you knew how many buildings there were?
A. No, no; only as to the values. I am applying that to values—our personal knowledge, not to the enumeration of the items of property, because we depended on that statement, and it was made under oath and we accepted it.
Q. Now, for instance, the sworn statement of Mr. Scribner shows 467.38 miles of main track including ties, fastenings and track laying. You had no information of what that was, nor what it was worth, except what Mr. Scribner swore to?
A. As to the ties, we accepted that.
Q. As to track laying?
A. Yes sir.
Q. As to the number of miles?
1193 A. Yes sir.
Q. How many?
A. I can't remember.
Q. What other information did you have?
A. We had none, except what Mr. Scribner said.
Q. I asked you if you had any, and what it was, if you did?
A. As to that class of property?
Q. Yes sir.
A. I don't know of any other.
Q. Of grading, so much a mile?
A. I should answer that the same.
Q. Ballasting?
A. Well, perhaps there was a little difference in the value of ballasting.

Q. Between whom?

A. Between our estimate and his.

Q. Where did you have any evidence of it?

A. We had the evidence of other roads as to what cobble-stone ballasting was worth, and the difference between that and sand and cinders and so forth. I don't remember whether we changed the value on that account or not, but I know it was discussed at the time of the assessment.

Q. The only other evidence you would have there then would be what difference there might appear in the sworn schedules of other roads as to ballasting?

A. No, we didn't change your valuation.

Q. No; but as to your evidence, I am not asking what you did; I am asking you as to what evidence you had before you.

1194 A. I mean to say we had the evidence, the statements of other roads as to what ballasting of certain kinds would cost per mile, and it was taken into consideration, and talked over at least.

Q. Who was it swore to it?

A. Well, I will have to go to the records to see, perhaps.

Q. Can you carefully think now of anybody that swore to it?

A. Well, I have this distinct remembrance that someone swore that cobble-stone ballasting was $2,000 a mile, while I think your estimate of Mr. Scribner's—I am not sure, was about $1,000 a mile, but I don't know as he specified as to what kind of ballasting it was, one way or the other.

Q. Then, the only evidence you had was as to the difference between cobble stone ballasting and some other kind of ballasting?

A. Well, I think they estimated that sand ballasting was cheaper than some other kind. It was owing to the distance it had to be hauled to some extent, and that was discussed.

Q. Did you find that the Union Pacific ballasting was cheaper than any other road?

A. I don't remember as to that; I couldn't say.

Q. Did you find that the ballasting of the Union Pacific was cobble stone or some other kind of material?

A. Since then I have noticed what kind it was in traveling over the road.

Q. It wasn't cobble-stone?

A. I don't remember of seeing any, but we might have passed over some in the night-time.

Q. The question is what evidence did you have before you?

A. I would have to refer to the statement of Mr. Scribner

1195 as to what it was; I don't remember now.

Q. What evidence as to the fencing?

A. The statement was given to me as to the kind of fence and the value.

Q. Yes, but now I am taking his list and trying to ask you what other evidence you had.

A. I think the Board accepted that as far as I remember.

Q. Rolling stock?

A. I think some of the rolling stock was changed, the value, increased.

Q. I know you changed it, I am going to show that you changed it, and I am going to show, if I can, why you changed it. We put in sworn testimony as to the value of the rolling stock, listing it to you at its value, and that was sworn to by Mr. Scribner, and before you, now please state under oath to the Court what other evidence you had before you as to the amount and value of our rolling stock.

A. We had evidence as to what engines and cars would cost some other persons who differed from what it was listed at.

Q. Who?

A. Well, I would have to go to the records to see. I think Mr. Highleyman was one.

Q. I am not talking about fellows who were making arguments.

A. No; I am not talking about them either.

Q. I am talking about those that made returns.

A. We subpœnaed witnesses.

Q. As to our rolling stock?

Q. As to general rolling stock.

Q. As to our rolling stock?

1196 A. Yes, with others.

Q. Can you possibly conceive or think of any other man that gave you any information as to the value of the rolling stock of the Union Pacific, its extent, its character, or its value?

A. I remember the board discussed your high class engines that you use.

Q. I don't care what the board discussed. I will get to what the board discussed; but I am asking you what evidence you had.

A. We had the statement of what the value of those things was.

Q. From Mr. Scribner?

A. Yes sir, and sworn to.

Q. Yes sir; sworn to by him?

A. Yes sir.

Q. I am talking about sworn testimony now?

A. Yes sir. As I said before others who were before the board and testified to these things also were under oath. My recollection is that the statement which Mr. Scribner provided for the per cent. of decrease in the value of your stock by use and so forth, both in cars and engines and so forth, and he didn't give the original cost or value of the engines. Now, so many engines averaged in value so much in a certain class, some may have been used ten years and some only one year, it is quite confusing to the board, in fact the board was not able in its judgment to arrive at a definite value of the—a sure definite value, and they come to that conclusion.

Q. You first ascertained the tangible value, the value of the tangible property of the Union Pacific?

A. Under Mr. Weston's resolution, we proceeded to ascertain or estimate the value of the tangible property of each line, each

1197 and every road.

Q. This paper marked Exhibit 74 is the statement of the valuation you placed upon the tangible property of the Union

Pacific Railroad, in accordance with Mr. Weston's resolution of June 16th, wasn't it, or May 16th, *May 16th,* 1904?

A. I notice this statement says lands, main line, bridges, as you returned them. I suppose that refers to your sworn statement filed.

Q. Certainly, certainly.

A. I presume that those show the correct figures.

Q. Well, it is agreed that it is correct.

A. Yes, yes; I never saw that before, nor I have not gone over it.

Q. This makes a total valuation of physical properties of the Union Pacific main line of $17,564,514.09; it shows $6,280,827.65 for the O. & R. V. branches; $830,690.60 for the Kearney and Black Hills Branch, or a total of $24,676,032.34.

A. That applies to the tangible property?

Q. Yes; that is the tangible property.

A. I presume the figures are as made by the Board.

Q. You assessed this property at $52,878,049.00, or an increase in tangible property over the tangible property returned of 114.03 per cent. Governor Mickey, what do you understand by intangible property?

A. I think the law enumerates what is intangible.

Q. Where does the law enumerate it?

A. In the statements that it requires should be filed with the board.

Q. What statements? Intangible property, you say the law requires where does it require it?

A. I have forgotten the section.

1198 Q. I am asking you what is intangible property.

A. I would answer that which is visible.

Q. That that is visible is intangible property?

A. Yes.

Q. Well, then, what is invisible property?

A. Well, there is the franchise.

Q. Well, what is the franchise?

A. Well, Mr. Highleyman of the Missouri Pacific expressed that as the value that would be obtained from a road in its operation, and that would be gauged—the value of the franchise, by the net earnings of the road. As an illustration, the Auditor of the Rock Island made a statement before the Board that if a road cost, in its building, a hundred million dollars, that it was worth a hundred million as long as it earned a fair per cent. upon that one hundred million, but when it earned an equal per cent. on two hundred million dollars that that would be the estimated value of the franchise.

Q. Well, that don't answer my question, what is a franchise I asked you.

A. My recollection is that the attorneys have not been able to agree on that definition.

Q. Well, then you don't know, if the attorneys don't know, certainly.

A. I should answer that it was the right to exercise the right of domain over a state, and to make charges for hauling passengers and

freight, and so forth, whereby they earn dividends. I perhaps would not be able to dissect the term any further than that.

1199 Q. Would your definition of a franchise cover intangible property?

A. Well, perhaps you would have to connect the tangible property with the intangible right or value, and the two combined would make up that, so that it is a going concern.

Q. So, in addition then, to the franchise which you put under the head of intangible property, you connect the tangible and intangible?

A. Well, the right to operate the tangible property.

Q. Well, but I understand you to say that was your definition of a franchise.

A. No; I am speaking about——

The WITNESS (to the Reporter): Please read that answer to me.

The answer referred to is read, as follows:

"A. I should answer that it was the right to exercise the right of domain over a state, and to make charges for hauling passengers and freight and so forth, whereby they earned dividends. I perhaps would not be able to dissect the term any further than that."

A. (continued). Well, I will answer that in large part, yes.

Q. That is a franchise. Now, if a franchise, under your sworn evidence, is covered by the word intangible, and you have defined what you believe a franchise to be, by connecting the tangible with the intangible, the given right of "domain" as you denominate it, to operate a road and make charges, what other fact, item or circumstance is there to be valued under the term intangible property than the franchise you have just described?

A. I don't think it is so much the fact as to what they are as to what the earnings are that determines the franchise value, that is the important thing, I think.

1200 Q. We will not confuse, Governor Mickey, the method of ascertaining the value of intangible property, with an inquiry directed *wo*, what intangible property is. I am asking you questions as to what intangible property is. You have answered "a franchise." I have asked you to describe a franchise and you have described it as you understand it. Now, what other thing, circumstance or item is to be considered under the term intangible property than a franchise?

A. I should say the stocks and bonds issued upon that road, and also the net earnings of the road.

Q. That would be intangible property?

A. No; that is considered in ascertaining the value of intangible property.

Q. I am not asking the method of ascertaining the value; I asked you what is intangible property.

A. Well, it is the thing that is ascertained by that method.

Q. The value of the stock and bonds, the amount of stock and bonds?

A. In other words, what it pays, the dividends it earns.

Q. That is a franchise?

A. No; that is the method of ascertaining the thing that is intangible.

Q. I have understood you very clearly on that. That is a franchise, you say. Now then, what other item is there that you take into consideration, acting as an officer, for the term intangible property, other than a franchise?

A. Well, I will have to answer that Mr. Baldwin, that determined the franchise value as the statutes provided, by this process, reports made of your stock and bonds and net earnings, as stated by the auditor of the Rock Island system; that was his explanation of the franchise value of a railroad.

1201 Q. Now, having fully answered as to your method of ascertaining the value of a franchise, we have that now, haven't we? You have told that two or three times, haven't you?

A. I so understand it, yes sir.

Q. And we now understand your views about it, and your definition. Now, I will be as plain as I can about it: Having it that under the term intangible property you consider the franchise, having defined franchise to be as you say the right of domain, the right to do business, and to collect for the transportation of traffic and passengers, what else is there of intangible property than this franchise?

A. I think that is a repetition of the former question.

Q. Well, then, I want an answer, you have never answered that question.

A. I understood that I did.

Q. Well, I beg to differ with you. You have stated how you determined the value of the franchise.

A. No——

Q. Well, now then, it is a simple question; what is there further than a franchise?

A. Well, I should say the plain answer that was given at first was that it was the right of domain, the right to charge and the right to operate, and that is——

Q. No; wait a minute; that is a franchise, is it?

A. That goes to make up the franchise. You can estimate the value of the franchise in that way.

Q. What is your idea as to the difference between the value of a franchise and a franchise itself?

A. You get under the operation of the statute of the state, the right to operate either in this state or any other.

1202 Q. Is that the franchise?

A. There is some value to that.

Q. Well, suppose it is worth four billion dollars or four dollars, what difference does that make?

A. Well, you couldn't do that without you had that right.

Q. Well, that is the franchise?

A. That is part of it. My judgment would be that the value of that is ascertained by what it earns, and when you get that you get that right.

Q. I have said, and you have said, and I have asked you repeatedly

what a franchise is, and you have told it, and you have told about the value of it. Now, I want to ask you this, what other property, thing or circumstance, is to be considered under what you call intangible property other than this franchise that you have talked about?

A. I think I have answered that question.

Q. I beg to differ; you have not. If you can't answer it, please say so.

A. If you want to analyze it or dissect it very clearly, I think it would be difficult for me, not being a lawyer.

Q. Well, you have found the tangible property, and now you are going to put a value on the intangible property. I am asking you what intangible property is.

A. You shut me off on that.

Q. Well, I humbly apologize if I did, and I am sorry if I cut you off, and we will take all the time you want to answer. You understand my question?

A. Yes sir.

Q. What do you understand my question to be?

1203 A. I don't know whether by phrase or word I can give you to understand what a franchise is. I supposed you were informed on that better than I am.

Q. Well, we will let the franchise go for whatever it is, whatever you think; you have described it.

A. Well, I will start in with your line. It was claimed by your agents that we could not take into consideration the franchise value of your road for the reason that you had obtained your charter from the Government.

Q. That is a question of law, and we abandoned it.

A. I have since learned that, but I am answering the question, and I may have to be a little lengthy in doing it, but grant me that privilege.

Q. Yes sir.

A. And that you were working under a charter obtained in Utah, and not under the charter obtained originally from the Government. Now, here is a road that would earn nothing perhaps, and its franchise value is worth perhaps no more than what they would have to pay to get it, but a franchise will vary in value because of the earnings, of the right to operate that franchise, and the law requires that that shall be measured by the board by considering the stock and bond values, and also by considering its net earnings, and that law expressly provides that the board shall ascertain that intangible value with the tangible value together, to get the value of the road.

Q. Are you through?

A. I think so, for the present.

Q. Now, you see you have made that statement two or three times, only in some different form in which you have called attention

1204 to the method of ascertaining the value of the franchise, haven't you?

A. Yes; the value of the franchise will vary the intangible value of railroads.

Q. Yes; very much; I admit that. We will lay aside the question of our Union Pacific charter under the laws of Utah or Nebraska, for the purpose of this question, and say for the purposes of this statement that it is a corporation organized under the laws of this state, and you have the right to assess its franchise. I ask you what you understood to be intangible property, and you said a franchise, and described it. My question now is, repeated four or five times, please state what item, thing, property, circumstances or fact there is to intangible property other than a franchise that you are describing, not the method of ascertaining the value of it, but what is intangible property?

A. The question admits that I have answered the question.

Q. That is the best answer you make to that question?

A. (To the reporter.) Read that again; I think that admits that I have answered the question.

"Q. (Read:) Yes; very much; I admit that. We will lay aside the question of our Union Pacific charter under the laws of Utah or Nebraska, for the purposes of this question, and say for the purposes of this statement that it is a corporation organized under the laws of this state, and you have the right to assess its franchise. I asked you what you understood to be intangible property, and you said a franchise, and described it. My question now is, repeated four or five times, please state what item, thing, property, circumstance or fact there is to intangible property other than a franchise that you
1205 are describing; not the method of ascertaining the value of it, but what is intangible property?

A. (continued). That reads very much like it admits that I have answered the question.

Q. Is that answer you have just made the best answer you can make, or think you ought to make, to my last interrogatory?

A. As I understand your question Mr. Baldwin, I think that is a fair statement.

Q. Having assessed the tangible property of the Union Pacific railroad at $24,676,032.34, the tangible and intangible together at $52,878,049.00, you have therefore valued the intangible property at $28,202,016.66, didn't you?

A. The statement you made that "having assessed" is not true.

Q. Valued, I mean; I did not mean to use the word assessed.

A. Well, it is not valued, because we could not determine its exact value; It would be impossible to do it.

Q. Of course it was, and you knew it was, didn't you?

A. The real, true exact value; the Board discussed that, and understood that we hadn't, but we made an estimate perhaps of what the intangible value was.

Q. That is you estimated it.

A. Yes.

Q. And you estimated the intangible property, the value of it, at $28,202,017.00, or in the neighborhood of $4,000,000 more than the tangible property?

A. My recollection is that it runs somewheres about——

Q. Governor, I am giving you the exact figures.

A. I can't answer the exact figures.
Q. Well, I am giving them to you.
A. I have the mileage valuation in mind.
1206 Q. Take your record and compare as I read for you, if there is any doubt about my giving you the figures correctly. You assessed the Union Pacific at $52,878,049.00?
A. No; not assessed.
Q. Or valued?
A. No; not valued.
Q. You did not value it?
A. Estimated it. Now, I have this memory of it, if you will allow me to express it, of this transaction——
Q. I am going to deal in exact figures. You say you estimated it, you didn't value it?
A. My recollection is the estimate per mile of intangible property was $38,000, or about that per mile, and I think Mr. Scribner's statement filed makes it about 32,000 per mile.
Q. If we could only get at an understanding, that I am not asking you the question as to amount or evidence. I am basing these questions, Governor, on your report, and I am asking you if you valued the Union Pacific at $52,878,049.00. You have sworn that you estimated it, not valued it at $52,878,049.00. Now, you valued the tangible property at $24,676,032.34; the difference between $24,676,032.34 and $52,878,049.00 is $28,202,017; the difference then between these two amounts is the value, or the estimate, you gave for the intangible property, isn't it, to-wit: $28,202,017.00?
A. I speak from memory. I have no figures before me. My recollection is that the estimated tangible value of the Union Pacific proper was about $3800 per mile—I mean $38,000 per mile—and the estimate tangible value submitted by Mr. Scribner was $32,000 per mile as applied to the main line of the Union Pacific. The branches were less; I don't remember the figures as correctly
1207 as I do the main line.
Q. That is not my question at all. Mr. Reporter, please read the last question.

The last question is read as follows:
"If we could only get at an understanding that I am not asking you the questions as to amount or evidence. I am basing these questions, Governor, on your report, and I am asking you if you value the Union Pacific at $52,878,049.00. You have sworn that you estimated it, not valued it at $52,878,049.00. Now, you valued the tangible property at $24,676,032.34; the difference between $24,676,032.34 and 52,878,049.00 is $28,202,017; the difference then between these two amounts is the value, or the estimate, you gave for the intangible property isn't it, to-wit: $28,202,017.00?"
A. Well, I would have to answer that that the difference between $52,878,049. and $24,676,032.—I mean to get the value of the tangible property, and deduct that from the total value would be the intangible value, and that is in accordance with the statement made by the Auditor of the Rock Island railroad before the board, that a railroad costing a hundred million dollars and paying 6 per cent.

dividend on that amount, should be assessed for a hundred million, but if the earnings increased so that it would earn that dividend upon a hundred million more, that it had doubled in value, and that is true of the testimony; that is corroborated by the testimony of Mr. Highlevman of the Missouri Pacific before the board under oath.

Q. So that is the way you arrived at the value of the intangible property?

A. Not necessarily so.

1208 Q. What other methods?

A. We estimate the value of the road by stocks and bonds.

Q. What other method?

A. Then the net earnings capitalized.

Q. And what other methods?

A. Well, those three things were taken into consideration, and ascertaining as best we could the value of the property, to-wit the tangible value, and the value of the stocks and bonds and the net earnings, and neither one was used as a basis absolutely, but all considered as provided by the statutes.

Q. Where did you get the value of the stock and bonds of the Union Pacific railroad company?

A. We had a very difficult proposition on that.

Q. Did you get it at all?

A. Well, we didn't get it as clear and definite in our minds as we wanted to.

Q. How much did you get it?

A. Well, we came perhaps within a few thousand dollars, but Mr. Scribner failed to give us the information which he agreed to, if he could furnish it, as to the value, and he said he would go to New York to ascertain it, and we waited until he should return, and he reported that he couldn't give us any further information than he had before.

Q. Aren't you mistaken about that?

A. No sir.

Q. Hadn't he already given you the information as to the value of the stock and bonds?

A. His estimated value, perhaps.

Q. Let us be correct about that. I will have to ask you some questions about that. Where did you get the amount of the value of the stock and bonds of the Union Pacific railroad?

1209 A. We consulted your returns and other statistical statements and publication.

Q. Name one of them.

A. Well, there was Poor's Manual, and I think it is "Drew." It is Bankers in New York. If I had the book here I could tell you definitely.

Q. When you had these before you, it is a fact, is it not, that there was but a slight difference there in the statement of the amount of the stock and bond issue, and the value?

A. I don't think there was much discrepancy, but I couldn't swear positively just what it was.

Q. Well, it wasn't much.

A. Substantially agreed, I think.

Q. Substantially agreed. Of course they did.

A. Yes; substantially agreed.

Q. So that the amount and value then of the stock and bond are contained in the affidavit of Mr. Scribner filed before the board, are they not?

A. I think that we consulted the stock reports and averaged them.

Q. Now, you are talking about values,

A. Yes, to get the values of the stock and bonds.

Q. I call your attention to the affidavit of Mr. Scribner filed before the board and sworn to on the 8th of June, 1904, marked Exhibit 68-c in this case, which was and is a part of the records of the board, and was before you at the time you made your assessment of the Union Pacific property which includes the statement of the capital stock and bonds afloat of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company and the Oregon Railway & Navigation Company, which you had before you, did you not?

1210 A. Well, I presume they were before me, if so stated. I mean to say that I cannot swear from memory, I say that. But I remember that certain statements and affidavits were on file.

Q. You made the assessment of the Union Pacific railroad property, and you state that arriving at the intangible property you took the stock and bonds and capitalization of the earnings?

A. Yes sir; into consideration.

Q. Then I asked you where you got this information as to stocks and bonds; you didn't make a guess of it, did you?

A. No sir.

Q. I have asked you and you have told me from statements filed.

A. Yes sir; I have answered you, statements filed by your people and also others, so there is no use answering it any more.

Q. There is one that you say you don't know whether it was filed or not, (indicating Exhibit 68-C.) *I*.

A. I am not swearing as to this particular paper.

Q. I ask you to examine Exhibit 68-c which is a copy of the statement filed by Mr. Scribner, which Mr. Bennett the Secretary of the State Board of Equalization certifies was filed before you as a part of the proceedings before you, and state whether or not you recollect of having that information before you when you took into consideration the stock and bond issue of the Union Pacific railroad Company?

A. Well, I thank you for this way of approaching the question. If that is certified by Mr. Bennett to be a part of the files of the board, it is unquestionably right.

Q. Well then, you had that there?

A. If it is so certified; you didn't say that before.

Q. Why I said I had a certified copy of the record there.

1211 A. I don't know whether the Attorney General saw those things or not. I want to know why that paper is there and what identifies it before I answer under oath, and I think I have a right to know.

Q. Well, there is no question about it; we have pointed it out and

referred to it several times, and the Attorney General has agreed that it is a certified copy.

A. Well, I didn't so understand it.

Q. Well, now this statement of Mr. Scribner's under oath shows a long list of stocks and bonds as a part of the general capitalization of the Union Pacific upon property other than the Union Pacific railroad itself. It shows stocks and bonds issued for independent, auxiliary lines, land companies, coal companies, water works companies, and so forth. State under oath what deduction you made from the general capitalization of stocks and bonds and is-ues for the stocks and bonds that covered these independent auxiliary companies in connection with the Union Pacific railroad?

A. We made a lot of deductions in the aggregate. I think they amounted in the aggregate, perhaps, to $30,000 a mile, or a little less than that perhaps, a little less or a little more.

Q. $30,000 a mile?

A. Yes.

Q. I don't understand you.

A. The capitalization as we put it was about between $90,000 and $100,000 a mile. After the deductions were made we estimated the road to be worth, of its line independent of those, other things, $65,000 a mile.

Q. According to its stocks and bonds?

1212 A. Yes sir; according to its stocks and bonds, and also in connection with its net earnings.

Q. Now, we will keep distinct please your theory of net earnings and stocks and bonds. We will eliminate that. The stocks and bonds, the value were before you, they were so much.

A. Yes sir.

Q. You could take the total issue of stocks and bonds and divide it by the number of miles, and have so much a mile?

A. Yes sir.

Q. Now, let's inquire about that, and not say a word about earnings. You say you took from these reports the total valuation of the stocks and bonds, amount and valuation divided it by the mileage and it gave $90,000 a mile, is it?

A. I said the reports and information that we got showed that the road was stocked and bonded at between $90 and $100,000 per mile.

Q. What other information did you have, and where in the world did you get it from as to the amount and value, say amount first, of the stocks issued by the Union Pacific railroad company, other than from the sworn statement of the railroad company itself, Poor's Manual, and Clews' Manual that you have spoken of; what other information did you have, and where did you get it from?

A. We had your own statement.

Q. Certainly you did.

A. Yes sir.

Q. That is sworn to?

A. Yes sir.

Q. That has to be, hasn't it?

1213 A. Yes sir.

Q. That is what these other outside reports were made on?

A. Yes sir, and then we had Clews' Manual.

Q. But you didn't find any difference between those reports and the reports filed by the company?

A. And then we had Poor's Manual, and in the aggregate they were very similar.

Q. They make up their statements from our sworn statements don't they?

A. Well, I don't know that.

Q. Well, we have to show a statement; anybody knows that, and nobody knows those facts excepting the Union Pacific itself.

A. I suppose it is from your annual report.

Q. You have said there was very little difference between them?

A. Yes; very little difference.

Q. We will start out then on the basis of this being approximately correct?

A. Yes sir.

Q. What amount of stocks and bonds did this board deduct from this sworn statement, as it shows, in fixing the value per mile according to the stocks and bonds?

A. Well, my recollection is that Mr. Scribner submitted a statement, at least one, of some property that should be deducted, that was assessed outside or off the right of way of this road, and that all deductions were made, so that after the deductions were made the valuation was about $65,000 a mile.

Q. So, taking this statement, and taking Mr. Scribner's statement as to the company's bond issue, the stocks and bonds that had been issued, owned by the Union Pacific, other than on its railroad

1214 property, you found it to be $65,000 a mile?

A. I said that was our conclusion—our estimate.

Q. It was not a question of deduction, was it, Governor?

A. We arrived at that figure.

Q. It was not a question of deduction, was it? It is absolutely a question of fact?

A. Well, it is a qestion of fact that entered into the ascertaining of the value of the road,

Q. Well, it was uncontrovertible and indisputable that there was so many miles of this road?

A. Yes sir.

Q. Simply that in accordance with this statement, so much of stocks and bonds had been issued, wasn't it?

A. Yes, but it was not clearly set forth by Mr. Scribner as to the real amount and manner of the deduction of outside property.

Q. You had clearly before you the amount of the issue?

A. Of the total issue, yes.

Q. Why, here it is, (indicating in the list referred to, and reading therefrom:)

Cascade Railroad Company	$300,000
Columbia & Palouse R. R. Co	1,000,000
Dessert Salt Co	50,000
Green River Water Works Co	225,000

and so forth, and

Northern Securities Company	82,491,871

all sworn and listed by him.

A. Yes sir.

Q. In which he swore that they were in the capitalization of the Union Pacific Railroad, that is, the Union Pacific Railroad
1215 had issued stocks and bonds to buy this property, didn't he?

A. I think that is true.

Q. Now, I am asking you what deductions you made from the stocks and bonds for that?

A. My recollection is that we made the deductions asked for.

Q. Asked for?

A. Yes.

Q. Who asked for them?

A. Mr. Scribner, I think, filed the list.

Q. Well, that would appear in the records here, didn't he in his statement——

A. We disputed as to the value perhaps of the stocks and bonds. Some of them he said were not dividend paying.

Q. But you could not dispute as to the amount of the issue, could you?

A. No, but we did as to the value; I think we differed on that, because his testimony was that some of them were not dividend paying, and then he said some of them are also supporting the road; for instance, the interest in coal, helping to supply the road. We went into that very carefully to ascertain as best we could the real value, honestly.

Q. So then, you honestly, and I believe that is true, differed with him as to the value of these?

A. I think we did.

Q. And so you made your estimate as best you could?

A. Yes sir, as best we could.

Q. Inasmuch as he couldn't give you the value of these, you exercised your best judgment as to the value of these stocks and bonds?

A. Somewhat, I suppose, I don't remember the exact
1216 deduction that was made, but I do remember that when the final assessment was made, to cover any deficiencies, we made the assessment of the Union Pacific, instead of $65,000, we made it less than that.

Q. $52,000?

A. No, about $55,000 a mile.

Q. $52,000,000.00—$55,000 a mile?

A. Yes; I think we had that in mind.

Q. And these deductions were made after the assessment had been made and published?

A. How is that.

Q. This assessment was made at once, the deductions were made afterwards?

A. What deductions?

Q. From $13,000 a mile to $11,000 a mile, assessed value.

A. How is that?

Q. There was submitted a statement of Mr. Scribner under oath of the amount and value of the stocks and bonds issued by the Union Pacific Railroad company, and accompanying this statement under

oath was a list of properties other than the railroad itself, covered by that general capitalization. He was unable to give you satisfactorily the value of some of the properties covered by the stocks and bonds, other than the railroads, and you honestly differed, as you have testified to; so then you exercised your best judgment in making such a deduction as you thought best on the value of these properties?

A. No; I will answer that we arrived at the value of about $55,000 a mile.

Q. Well you made a deduction?

A. After considering that matter, that was our estimate.

1217 Q. You didn't take the face value?

A. Perhaps, after the deductions were made, the value of the road was $65,000 a mile.

Q. Well, your difference was as to the amount. You couldn't differ as to the list, could you, Governor? You couldn't possibly differ as to the list of the properties covered by these stocks and bonds, could you?

A. The list has been admitted. We took his statement.

Q. You had to; that is the reason, because there is no other evidence in the record?

A. Yes; we had to rely on that.

Q. You had to rely on the face of that evidence, because you couldn't have any other evidence from any other place. The company itself knew its issues, and when the proper officer swore to it, that was the evidence, and the only evidence, you had to rely on. Now you might differ as to the value, but you could not differ as to the properties from which the stocks and bonds were issued, could you?

A. My reply would be that Mr. Scribner's statement as to the value of that property, some being non-dividend paying, raised a question as to the amount that should be deducted, and the board had to decide upon the deduction.

Q. And did do it?

A. Yes sir.

Q. But the board could not deduct any one list of these companies, fr[illegible] which these stocks and bonds were issued, could you, and yo[illegible] didn't?

My recollection is that we gave all the deduction you asked for, after we adjusted the value, and then, in addition to that,

1218 before the assessment was made, we still gave you a further deduction, that is, in making the assessment, we made it $55,000 a mile.

Q. Now, if it takes me all summer, I am going to stand here and ask this question: Governor Mickey, there were submitted to you under oath a statement by Mr. A. W. Scribner, Tax Commissioner of the Union Pacific Railroad Company, a list and statement of the stock issued and the bonds issued by the Union Pacific Railroad Company; is that not correct?

A. The statement will show.

Q. I know that, but I am asking you.

A. I will stand by the statement on file; I can't answer because I haven't gone over them.

Q. Well, I have got to go over it, and I have to have an answer to these questions.

A. I haven't looked over that statement.

Q. Well, look over it now, because I am going to have these questions answered.

A. Whatever is on file there, as made up in the case, I understood by the attorneys—both of you—as coming from the Secretary and the records of the Board; of course, with authority.

Q. I am asking you now if you didn't have a sworn statement of Mr. Scribner, the tax commissioner of the Union Pacific Railroad Company of the enumeration of the bonds issued and the amount of the stocks issued, and if you have any doubt about it, to refresh your recollection, examine Exhibit 68-c a part of the records of the Board of Equalization and Assessment, and take your time.

A. I have answered the question.

1219 Q. How have you answered it?

A. I said as shown by this statement there, that it was before the board.

Judge BALDWIN (to the Attorney General): Mr. Attorney General, was that statement there?

The ATTORNEY GENERAL: It is admitted by the pleadings that that statement was there, and it is admitted now by attorney for the defendant that Exhibit 68-c was before the Board.

Q. Now then, that statement shows a capitalization of $454,945,475.00 outstanding bonds and stock of the Union Pacific Railroad Company. That statement also shows that that amount of stocks and bonds thus issued cover not only the Union Pacific proper, but the list of stocks of companies contained in this exhibit amounting to $148,721,671.00 of stocks; of bonds $19,683,200.00; land assets $4,329,844.00; water line properties $4,000,000.00; or a total of $176,734,715. I ask you under your oath to now state, sir, if you took from the total amount and value of the stocks and bonds ascertained by you as a Board, in all those outstanding properties, other than the Union Pacific?

A. I should answer that we did.

Q. Mention what ones.

A. Well, I can't from memory. I remember that the value of these stocks was entered into in testimony with Mr. Scribner.

Q. The value?

A. Yes sir.

Q. You have sworn already that you differed as to the value?

1220 A. Yes sir.

Q. Before you made the deduction?

A. I said we made a deduction until we made the value of the road in our judgment $65,000 a mile.

Q. Then you deducted from the stock and bond issue, didn't you—why, Governor Mickey, can you doubt that you did do that?

A. No, we deducted because of the property that belonged outside of the right of way——

Q. What was the total amount of stocks and bonds issued, that you divided by the mileage to ascertain the value per mile?

A. I would answer from memory that I couldn't give it, but I remember distinctly that the value was reduced to $65,000 per mile.

Q. How many miles?

A. On your mileage in this state?

Q. On the mileage in this state?

A. Yes sir.

Q. $65,000?

A. Yes sir; and afterwards, before the assessment was completed and the assessed valuation was fixed it was put at $55,000 a mile.

Q. Yes; now we have got all that; that's all right. Now, you do recall, there is one thing you do recall, and that is that it was $65,000 a mile when you got through?

A. Well I said about that.

Q. About $65,000. You are correct about that; it is $65,092.

A. Well, I only speak from memory.

Q. That is actually so; you were about correct when you
1221 testified $65,000 a mile, aren't you?

A. I think that is near the valuation, yes.

Q. Isn't it a fact, Governor Mickey, that you found that to take the stock and bond issue of the Union Pacific at $398,478,068.00; deducted for locally assessed property $1,152,230.00, it left a balance of $397,321,838.00, and dividing that by the mileage of the system, 6104 miles, you got your $65,092.

A. I would answer that by saying I had never consulted the figures as to that since the assessment, and as I said before, as to the exact miles, and these other figures, my memory would not enable me to, swear, but I remember distinctly that the mileage value was about $65,000 a mile.

Q. Now the fact is that that was the amount that you found of the stocks and bonds issued per mile?

A. I would have to multiply that to answer that question.

Q. Well, doesn't it turn out the same?

A. I would have to take the time to make the calculation.

Q. You have said that when you got through you found the valuation of this property about $65,000 a mile, didn't you?

A. Yes sir.

Q. And you reduced it to $55,000 a mile, didn't you?

A. Yes sir.

Q. Now, I am asking you if you come right down to the real truth about it, that you took that capitalization of $398,474,068. and deducted for the locally assessed property $1,152,230., which left a balance of $397,321,838., and dividing it by the mileage of the system, that is the Union Pacific, the Oregon Short Line and the Oregon Railway & Navigation Company, at 6104 miles, you got the $65,092. a mile?

1222 A. I don't recall the mileage that we figured now, because I haven't looked at it since.

Q. I am taking the exact figures.

A. Well, I am saying that I have not consulted the figures.

Q. Isn't that the method you adopted, of course?

A. Why we took the total value of the system and then divided it by the number of miles, to get the average per mile, yes sure.

Q. How did you other than by the method you have specified, how did you arrive at the value of the intangible property, other than by taking this method that was suggested to you by Mr. Highleyman?

A. How is that?

Q. Did you adopt *at* any other method of arriving at the value of the intangible property other than you have heretofore stated?

A. That was the tangible value, based on the reports largely of the companies, and the stock and bond value, and the net earning basis, capitalized. Those three, as under the statute is provided, we took into consideration, and the Board did that but did not arrive at any conclusive value until they had considered all.

Q. How much did you consider about the earnings?

A. Well, the earnings were about $5500. per mile?

Q. I know what they were, but what weight did that have with you?

A. We discussed the capitalization, and the per cent. I think perhaps 6 per cent. was the——

Q. You took the capitalization theory at 6 per cent.?

A. Yes sir.

Q. And you took the stock and bond issue?

A. Yes sir.

1223 Q. At what per cent.?

A. Some of it was less than par, and some perhaps a little more, perhaps more, I don't remember what interest the bonds did draw. I would want to consult the record or the Manuals.

Q. You say you considered them all, but the fact is, Governor, that you based it entirely on the stock and bond issue, didn't you?

A. No sir.

Q. And your record- don't show that, do they?

A. How is that?

Q. The records don't show that you did?

A. I didn't understand that question.

Q. And the records of your meetings do not show that you took the stock and bond issue solely?

A. Well, I haven't read the records over, but I would swear positively that we did do that, yes sir.

Q. Now then, we have got something that we are positive about,

A. Yes sir; I think Mr. Scribner would remember that, because he went to New York to ascertain the value of the stocks and bonds—said he was.

Q. Now, you have said that two or three times.

A. Yes sir; I remember distinctly what he said and he said after he came back that he couldn't ascertain the value in New York, that they wouldn't give it to him, and didn't.

Q. I call your attention to this, Governor Mickey; Isn't it a fact

that the information you elicited, or sought to elicit was not a statement of the amount of capitalization of the Union Pacific railroad, nor the value of the stocks and bonds, for that had already been filed and sworn to; but you asked him to separate it, and he
1224 told you that he couldn't do that, unless he got it in New York; he went to New York, and returned with the affidavit of Mr. Mahl, which says not that he couldn't give you the capitalization of the Union Pacific, the amount of stock and the value, but that he couldn't separate it. I ask you now, sir; after your repeated statements that he was asked for it and failed to give it, if that is not a true statement.

A. I should answer no.

Q. I read from the record, from Exhibit 68-*c*, the affidavit of A. W. Scribner, filed before the State Board of Equalization and assessment, and accepted by you a being correct, as you have testified to; that is, not saying that you testified that the statements were correct, but that I am correct in saying that the statement was filed before the board. In this statement he gives the exact amount, and I ask you if that was not before you. I now ask you to examine that and see if the amount absolutely of the stock and bonds, and the value was not sworn to before you and filed before you?

A. I can't say when this was filed.

Q. Look at this and see, then.

Judge BALDWIN (to the Attorney General): Mr. Attorney General, wasn't that paper, Exhibit 68-*c*, filed before the Board.

The ATTORNEY GENERAL: There is no use of this quibbling; it is there, and it shows for itself it was filed.

A. I would have to answer that I remember distinctly that he couldn't furnish, and said he couldn't furnish the information we asked for.

1225 Q. You have testified three or four times that you asked Mr. Scribner to give you the amount of the stock and bonds issued by the Union Pacific, and the value. Now sir; I ask you—and that is your sworn testimony here—I ask you to examine this Exhibit 68-*c* (extending towards the witness the paper in question) and you can examine it or not, as you please, and say if you do not find therein the sworn statement of Mr. Scribner as to the amount of the stocks and bonds issued by the Union Pacific and the value.

A. I have no doubt that he filed this statement; I presume he did.

Q. Didn't A. W. Scribner swear to you that the Oregon Railway and Navigation Company's capital stock afloat—no; I mean Union Pacific Railroad Company, capital stock afloat $208,335,000.00, market value $175,628,569.00; Oregon Short Line, $10,000; O. R. & N., common $20,210., O. R. & N. preferred, $14,676.60; total $175,673,-475.60;

Bonds Afloat.

U. P. R. R. Co., First mortgage		$100,000,000.00
First Lien, convertible		87,257,000.00
O. S. L.	$12,328,000.00	
"	423,000.00	
"	60,000.00	
"	36,000,000.00	
"	14,931,000.00	
		63,742,000.00
U. & N.	4,993,000.00	
"	1,802,000.00	
		6,795,000.00
O. R. & N.	$21,475,000.00	
"	3,000.00	
		21,478,000.00
Total Bonds		$279,272,000.00
Grand Total		$454,945,475.60

Q. (continued). Is that not in the sworn statement before you by Mr. Scribner?

1226 A. I presume it was.

Q. I asked you whether it was or not. I want no presumptions.

A. I say, if it is taken from the records—I haven't examined it before. I presume it would be the same as filed, or a copy of it.

Q. Then you are in error when you say he did not give you these values?

A. He stated before the Board verbally that there was certain information he did not obtain, and I think I will corroborate that by other testimony.

Q. Now, I call your attention to Exhibit 68-*e*, which was the affidavit of Willliam Mahl, Comptroller of the Union Pacific Railway Company, which Mr. Scribner brought back to you and filed in conformity with your motion, or someone's motion on that board, in which Mr. Mahl says that he cannot separate and give you the separate stocks and bonds on these different companies, but you have the amounts and the issue and the value. Now please examine Exhibit 68-*e*.

A. My recollection is that there was a difference in certain kinds of bonds, that the Board was trying to arrive at the truth.

Judge BALDWIN: After constantly protesting to the witness that his answers are in no way replies to the questions or interrogatories directed to him, counsel for complainant now again protests against the conduct of the witness in not answering the question.

Q. I ask you, sir, now to read the affidavit of William Mahl, Exhibit 68-*e*, filed before you and your board, in which Mr.

1227 Mahl says he cannot separate it for you, not that you cannot have the amount or the value.

The ATTORNEY GENERAL: The defendants object to this as being incompetent, irrelevant and immaterial.

A. Well, I will have to answer that without doubt this was filed before the Board, because Mr. Scribner was before the Board and said that he gave us all the information that he could obtain, but there was some information that the board wanted, from which to arrive at the value, that he did not obtain.

Q. That is, that he did not obtain a separate valuation of these different bonds, isn't it?

A. I answered the question——

Q. I asked you another one——

A. That we didn't by his report ascertain the value of the——

Q. Now, then, if you have any recollection on the subject at all, wasn't the information you sought a valuation of the different properties of this capitalization; for instance, the Green River Water Works Company, and the Land Company, and that is the information that he couldn't obtain for you?

A. I would have to answer that there was certain information that he couldn't obtain and didn't obtain at New York.

At this point, it appearing that Governor Mickey had an important engagement, he was excused as a witness for the time being.

1228 PETER MORTENSEN, a witness on the part of the complainant, is here called and sworn. Being examined in chief by John N. Baldwin, he testified as follows:

Q. Mr. Mortensen, you are treasurer of the state of Nebraska?

A. Yes sir.

Q. How long have you been in that position?

A. Since January, 1903.

Q. As treasurer of the state, you was a member of the State Board of Equalization and Assessment in 1903?

A. Yes sir.

Q. In that year the board consisted of the Governor, the Auditor and the Treasurer?

A. Certainly, yes sir.

Q. Was that your first experience as a member of the Board?

A. That was my first experience, yes sir.

Q. Your first experience in making an assessment of railroad property?

A. Yes sir.

Q. Under the law as it then stood it provided that all property should be assessed at its actual value?

A. That was what the law provided, yes sir.

Q. But as a matter of fact that was not done was it?

A. It was not done, no sir.

Q. Not done by you in assessing railroad properties because it was not done by assessors in assessing all other properties?

A. As a matter of custom, yes sir.

Q. It had been a matter of custom and practice before that to assess property at what per cent. of its value, do you say?

A. Well, I can't speak for the whole state.

1229 Q. Well, generally, your knowledge about it?

A. Well, as far as my county is concerned, I think they assess from one-fifth to one-seventh.

Q. What was your knowledge then, as you were a citizen of the State and also well known as to property generally, for some time before 1903, having been assessed, not at its actual value, but at what per cent.?

A. At whatever happened to please the county, sufficient to raise the county revenues.

Q. Well, what was it generally?

A. I think from one-third up. I think some of the western counties were assessed at one-third.

Q. How was it about the eastern counties?

A. I wasn't familiar with the eastern counties; I don't live there.

Q. Well, didn't you have knowledge? You have been over the state a good deal, and you were known well enough to be nominated for state treasurer.

A. I probably had some idea, but not based on my own knowledge.

Q. Well, generally—what was generally accepted?

A. Well, if you separate the western from the eastern counties, I presume that the eastern counties were probably assessed at from one-fifth to one-tenth.

Q. In 1903, you assessed the Union Pacific railroad in this state for $6,323,332.00—I am giving you the exact figures.

A. Yes, we will take it as such.

Q. That, of course, was not the actual value of the properties of the company at all?

A. We didn't have much opportunity to investigate. That

1230 had been a custom for some years to assess it at that value, and as I say, we followed up the custom.

Q. Well, but you did investigate it some, didn't you?

A. Very little.

Q. Didn't you know whether it was its actual value?

A. Oh, we didn't know much about it. There was no information furnished. We used the custom that had been used for years; we tried to according to what little knowledge we had, we tried to equalize somewhat between the roads, from general knowledge.

Q. You made a subsequent investigation in the year 1904?

A. Yes sir.

Q. Then you did study it?

A. We investigated it.

Q. Just as carefully as you could?

A. Yes sir.

Q. Then, from what you learned in 1904, you know that the assessment in 1903 was not the actual value of the property?

A. I thought you were just examining on the assessment of 1903.

Q. Yes, but I say when you came to examine in 1904, you knew from the result of the information you gained then that your assessment in 1903 was not the actual value?

A. Yes sir.

Q. The valuation per mile of the Union Pacific in 1903 was $6,577, your valuation in 1904 was $55,000?

A. Yes sir.

Q. Nine times as large per mile, the assessed valuation; was there that difference?

A. I can't tell you what difference there was—there couldn't be that difference, no sir; because the road was worth very nearly
1231 as much in 1903 as it was in 1904, not quite as much probably, but nearly so.

Q. Practically the same?

A. Yes sir.

Q. The evidence before you showed that?

A. Yes sir.

Q. What sources of information did you have, Mr. Mortensen as to the amount and description and character of the tangible property of the Union Pacific in 1904?

A. We had the reports from the company furnished by Mr. Scribner.

Q. You had his sworn report?

A. Yes sir.

Q. And schedule of property?

A. Yes sir.

Q. You had no other evidence?

A. Only just our personal knowledge, what little personal knowledge we might have by traveling over the road.

Q. By traveling over the road?

A. Yes sir.

Q. But that could not be at all accurate—you had to rely upon the statement of Mr. Scribner, didn't you?

A. We used that as a part of it.

Q. Well, didn't you have to rely on it as your evidence, as far as considering the valuation?

A. As far as considering the valuation of the tangible property we had to rely largely on the statement furnished by Mr. Scribner.

Q. What did you understand the intangible property to be?

A. The intangible property, I understand, was the differ-
1232 ence between the cost of the road, or the production of the road, and what it might have cost at some time or other, and its present value.

Q. What do you call that?

A. What do I call the present value?

Q. What do you call that difference?

A. The difference between what we assessed the tangible property at and the value of the road as shown by the stock, the value of the stock and bonds.

Q. That, Mr. Mortensen, is merely the method you adopted to determine the value of the intangible property.

A. That is one of the methods, yes sir.

Q. But what is the intangible property; what was the intangible property that you thus valued?

A. If you know the value of the road, according to its stock and

bond value, and know what we considered the tangible property at, you can figure out the difference between the tangible and intangible property, or between the tangible property and the present value of the road.

Q. Yes, I agree with you, that that is the method that you have determined; that is the method you adopted?

A. Yes sir; the method we considered.

Q. Now, you have told the method that you had adopted to find the value of the intangible property.

A. One of the methods, yes sir.

Q. But now what I want to know is, what is intangible property? What did you consider as intangible property?

A. I have answered that question by saying that the intangible property—the value of the intangible property is the difference between the cost of the road, the value of the road when it was built, or the money invested in it; and its present value.

1233

Q. Now, as I say, you have answered that, but don't you see, Mr. Mortensen that that is a mere method of arriving at the value; that is the yard stick; that is the measure; but what is it that you thus measured?

A. I don't understand you, Mr. Baldwin.

Q. I have asked you what the board considered as intangible property?

A. Well; I have stated that twice.

Q. That is you have stated how you arrived at the value, but what is it that you arrived at? You can give the figures, if you find the tangible property worth fifty million, and find the value of the road at a hundred million, by considering the value of the stocks and bonds. Now, you say that is the value that you fixed on the intangible property. What is that you so fix the value of?

A. You mean what we value the intangible property at?

Q. No. What is that you valued; what is it that is intangible property? What is that intangible property; what does it consist of? You have told how you find its value, but what does it consist of, what right have you to fix any such value?

A. We have the right given us by statute.

Q. You have the right to value what?

A. To value the road at its present value.

Q. No; you haven't any such right; the statute does not say that you have a right to do that, that was the way you did. I mean, there is no direction in the statute. I am trying to make myself clear to you. I have asked you what you considered as intangible values.

1234

A. I presume you want me to say that is the franchise.

Q. I want you to say what you think it is.

A. Well, let's call it that; I will answer that that is the franchise value.

Q. Now, what is your idea of a franchise?

A. My idea of a franchise is that the foundation for the franchise is to obtain articles of incorporation, the right to do business; the right to transact business as a corporation. When that right is ob-

tained and the stockholders put in money and it proves successful and you get a good income for it, more than the legitimate interest on the money first invested in it, the difference between that and the value of the property up to the time it was assessed is the intangible or franchise value.

Q. So that is what you call the franchise?

A. Why you call it that; you want me to call it that. I don't know any other name for it, Mr. Baldwin, and I use it for that purpose.

Q. You understand me; I don't want to be construed as criticising anybody that cannot define a franchise, because there are many descriptions of it, but I want to get your idea of what you considered under the word intangible. Now then, you have well said that you can call that a franchise, if that is what you mean. As a member of the Board then, you was trying to find out the value under the term franchise, if that may be adopted, of the right to do business, the right of operating a railroad in the state of Nebraska?

1235 A. Yes sir.

Q. And to collect toll.

A. No sir; I was trying to——

Q. If that is not so, what is there in addition to that?

A. I was trying to assess the road and the property owned by the Union Pacific road at its present value.

Q. Well, but you assessed its value at $24,000,000, its tangible property, didn't you?

A. I don't remember.

Q. I wish you would take the return and see.

A. Well, I admit that.

Q. In round numbers you assessed it at twenty four million dollars—valued it?

A. No, we didn't value it.

Q. I mean the tangible property?

A. We considered that as a part of the——

Q. Well, you fixed the value on that?

A. We did not fix the value——

Q. Sir?

A. I beg your pardon——

Q. You didn't fix it at all?

A. No sir; there is nothing to show in the records that we fixed any tangible value to it. We used the facts and figures as were brought in for the purpose of fixing the value.

Q. Then read this Exhibit 74, (handing witness the paper).

A. I know what it is.

Q. Well, those are the fiufes you adopted, anyway—use what term you want to—as the value of the tangible property?

A. There is nothing in the record to show that we ever

1236 adopted them, and they never were adopted.

Q. Were those figures ever used?

A. They were used for the purpose of obtaining the — as a part of the value of the road.

Q. Then that part of it was ascertained, wasn't it?

A. It was ascertained for the purpose of fixing the real value.

Q. You had to know and consider other properties to fix the real value, didn't you?

A. Yes sir.

Q. Those figures were a part of these figures?

A. It was considered as such, yes sir.

Q. I don't want to confuse you. I don't say that they constituted the assessment and valuation of the property, because you had the other properties to consider, but I ask you if these were not the figures adopted as the value of the tangible property in accordance with the resolution.

A. In compliance with Mr. Weston's resolution, yes sir.

Q. Now, these figures add up $24,676,032.34; the full value as found by the Board is $52,872,049., that was the amount you added for the intangible property.

A. That is, provided that our judgment was right in figuring the tangible property.

Q. Yes, I say that is what you have, simply tangible and intangible property to value?

A. That is all.

Q. And that therefore, necessarily, would be the value you fixed on the intangible property, whatever that is?

A. Yes.

Q. Now, Mr. Mortensen, you had the statement of Mr. Scribner, the sworn statement before you, of the amount of the issue
1237 of the stock and the bonds of the Union Pacific railroad company, didn't you?

A. And auxiliary lines, yes sir; the Oregon Short Line and the Oregon Railway & Navigation Co.

Q. You had the capitalization issued by the Union Pacific railroad system?

A. Yes sir.

Q. Did you have any other information as to the amount of these stocks and value as issued, the par value say?

A. As to the value of these stocks and bonds?

Q. Yes sir.

A. Yes sir.

Q. Now, be sure that you understand me before answering that.

A. Yes sir; I think I understand you, Mr. Baldwin.

Q. I am talking about the statement sworn to by Mr. Scribner that gives an itemized statement of the amount, par value, of the stocks and bonds issued by the Union Pacific railway.

A. Certainly.

Q. It states how many bonds were issued, and when and what stocks, do you understand?

A. Yes sir.

Q. You had no other information as to that, did you?

A. We had such information as we might be able to obtain from your 6th Annual Report to the stockholders.

Q. Does it differ any—how could it differ—there couldn't be but one issue, one statement of issue of stocks and bonds, I don't mean

to say that they couldn't issue more than one, but there couldn't be any possible dispute as to the amount of stocks and bonds
1238 issued by the Union Pacific.

A. There might be a dispute as to the value of them.

Q. Oh, certainly, I am not talking about that, there might be a dispute as to the value?

A. Yes.

Q. But could be no dispute as to the amount issued?

A. We admitted that.

Q. You had the evidence of Mr. Scribner?

A. Yes; and also in your 6th Annual Report.

Q. You had that, I say?

A. Yes sir.

Q. You had no other evidence as to that, did you?

A. Not in regard to the amount, no sir.

Q. We are differing as to value—value is another thing—but I am talking as to the amount of the issue.

A. Yes sir; I understand.

Q. That issue, as it is shown, was, although under the general title of Union Pacific railroad, was covering the Union Pacific railroad, the Oregon Short Line, and the Oregon Railway & Navigation Company, wasn't it?

A. Yes sir.

The ATTORNEY GENERAL: Do you mean the stocks or bonds, or both?

Mr. BALDWIN: Both; that is correct.

A. Yes sir.

Q. Now, that statement showed, did it not; that the amount of stocks and bonds just issued by the Union Pacific were not only used to cover the Union Pacific railroad property itself, but it covered other properties, didn't it?

1239 A. The whole system.

Q. The whole system?

A. Yes, the whole system. For instance, this Union Pacific railroad company stock afloat $208,335,000.00, Oregon Short Line, $10,000.00; Oregon Railway & Navigation Company, common, $20,210.00; Oregon Railway & Navigation Company preferred, $14,676.60; and so forth—Bonds afloat, Union Pacific railroad company, first mortgage, $100,000,000.00; first lien convertible, $87,257,000.00; Oregon Short Line, $12,328,000.00; $423,000.00—$60,000.00—$36,000,000.00—$14,931,000.00—U. & N. $4,993,000.00—U. & N. $1,802,000.00; Oregon Railway & Navigation Company, $21,475,000.00; Oregon Railway & Navigation Company $3,000.00. That is correct is it not.

A. Yes sir, $279,272,000.00.

Q. Making a total of $454,945,475.60?

A. You give it in your report as $487,000,000.00.

Q. I mean, this statement here shows $454,945,475.60.

A. Yes sir.

Q. That stock and bond issue covered other property than the Union Pacific, didn't it?

A. It covered other property.

Q. The Oregon Short Line and the Oregon Railway & Navigation Company?

A. Yes sir.

Q. And also, by those stocks and bonds thus issued, the Union Pacific acquired the stock of the Companies enumerated in Exhibit 68-*a*? also Exhibit "A" attached to Scribner's report?

A. Yes sir; you have that enumerated in Table 4 in your
1240 report here as $139,000,000.00.

Q. There is the Cascade railroad company, the Columbia and Palouse railroad company; the Desert Salt Company, the Green River Water Works Company, the Leavenworth & Topeka railway company, the Leavenworth Depot and Railway Company, The Mill Creek Flume & Manufacturing Company, The Northern Securities Company, the Occidental and Oriental Steamship Company, Ogden Union Railway & Depot Company, and so forth—you recall that list of property, don't you?

A. Yes sir.

Q. Upon which the capitalization this issued was used to the extent of $148,721,671.00?

A. That is the face value.

Q. Yes sir. When you arrived at your valuation, according to the stocks and bonds issued, state which one of these companies you deducted?

A. We did not arrive at any conclusions on that particular point; we took them into consideration and made deductions which I am free to say I did not think we ought to. I think that those stocks and bonds that you owned outside of your own company is just as much property of the Union Pacific road as your road bed and your equipment is.

Q. Now, I don't care to argue with you; I don't agree with you, but I will assume that for the purposes of the question. I want you to swear and to point your finger on this list where you deducted.

A. I think we deducted them all, as far as we thought—according to our judgment of the value.

Q. You did? Did you specifically take up any one of them?

1241 A. No. We took them up as a whole.

Q. All you did was to make a general estimate and deduction?

A. One item we considered was according to your own figures, in Table 4, at a value of $139,000,000.00.

Q. Which one is that?

A. $139,000,000.00. That is your own figures.

Q. What do you say about this deduction here?

A. We considered that as a deduction, which I am sorry to say we ought not to have done.

Q. You deducted what?

A. $139,000,000.00 or $140,000,000.00.

Q. From what?
A. From the total assets.
Q. Where is the total of assets?
A. The total is down there, $540,000,000.00.
Q. You deducted what?
A. Why, $139,000,000.00.
Q. So, the way you took the stock and bond issue, you took our 6th Annual Report for the year ending June 30th, 1903?
A. We corroborated that with your own report.
Q. And you took the total value of the stocks and bonds at $540,388,745.29?
A. I beg your pardon—you have other assets except stocks and bonds.
Q. Well, I am talking about stocks and bonds
A. I deducted them from the total assets of your company.
Q. Oh, the total assets of the company?
A. Yes sir.
Q. You didn't take it from the total amount of the value of the stocks and bonds?
1242 A. Well, I presume I took it both ways.
Q. Well, which way did you take it?
A. I took it both.
Q. Did you come to the same conclusion by taking both?
A. We certainly couldn't come to the same conclusion, but we considered both.
Q. Both which?
A. Both deducting from the total amount of stocks and bonds and the total amount of all the assets.
Q. What do you mean by the total amount of our assets, our tangible and intangible property?
A. And such other assets as that statement shows you had.
Q. What do you mean by this statement showing other assets than our tangible and intangible property?
A. You have given yourselves—charged yourselves up with coupons that were not matured, or will mature the year following the assessment, also with interest on bonds accrued, and with notes and bills payable, and with vouchers and pay rolls, and even with a dividend that was payable in July, and October—unpaid dividends; and then you had some deferred liabilities, such as taxes assessed but not due, items due to some of the proprietary companies, and such other items included under contingent liabilities,
Q. You took that from that record, didn't you?
A. We took that from this record.
Q. You had no other source of information did you; I mean for these figures you have been giving?
A. We did take it from that.
Q. You didn't have any other way to get it, did you?
1243 A. No; you didn't furnish us any.
Q. So you didn't have any other way?
A. No sir.
Q. And you took that into consideration, didn't you?

A. Yes sir; I think under the statute we were compelled to do that.

Q. And you did do that?

A. We considered that.

Q. When you say you considered it, you mean you took it into consideration?

A. I mean we considered it when we came to fix the values.

Q. Do you mean you just simply read it and then dropped it?

A. It was preliminary work, the same as the valuing of the tangible property.

Q. Well, when you say you considered it, what do you mean by that, that you took it into consideration?

A. Yes sir.

Q. Now, you are sure about that?

A. Why certainly. I would like to keep that, (indicating the 6th Annual Report, from which he had been reading, and for which Mr. Baldwin extended his hand.) I brought that with me.

Q. And you shall have it.

A. Yes, under that question I might wish to use it.

Q. You took into consideration coupons matured but not presented $184,716.85?

A. In fact, you might finish it up and say we took the total amount of your liabilities.

Q. And then also coupons due July 1st, 1903, $2,528,005.00; interest accrued on bonds and loans to June 30th, 1903, $1,511,570.20; loans and bills payable, $14,250,000.00; vouchers
1244 and pay rolls, $3,330,931.38; dividends payable July 1st and October 1st, 1903, $4,386,660.00; unpaid dividends, $22,436.00; deferred liabilities; taxes assessed but not due, $719,847.21; due to sundry proprietary companies, $247,349.30—now did you take that last item as assets?

A. Didn't take them as assets, but as a liability. If you want to get assets, give you that on the left side.

Q. When you state taxes assessed but not due, what did you take, what did you testify to a moment ago here about that?

A. That was a liability.

Note by Examiner.—At this point witness requested that previous answer referred to be read, which was read as follows:

"A. You have given yourselves—charged yourselves up with coupons that were not matured, or will mature the year following the assessment, also with interest on bonds accrued, and with bills payable, and with vouchers and pay-rolls, and even with a dividend that was payable in July and October; unpaid dividends; and then you had some deferred liabilities, such as taxes assessed but not due, items due to some of the proprietary companies, and such other items included under contingent liabilities."

Q. How did you treat those—as an asset because in the hands of the company?

A. I treated them as a liability, the same as the stock and bonds.

Q. Then you added that to the stocks and bonds?

A. In order to make a balance with the other side of the ledger, which I have not explained yet.

Q. Well, but you added these, did you?
A. They are all added.
Q. Then you included these?
1245 A. Included them.
Q. So that they are added to your valuation of the stocks and bonds?
A. As a consideration in getting the assessment.
Q. In order to get the valuation—the stock out, stock outstanding, is a liability, isn't it?
A. Yes ir; certainly.
Q. And the bonds are liabilities aren't they?
A. Yes sir.
Q. Now then, in addition to that, you added these current liabilities, because you think they ought not to be credited the way they are?
A. Yes sir; I think they have a right to credit them as they are, because you have matters on the other side to offset that.
Q. But you added these to the value of the stock and bond issue?
A. They are added, yes sir.
Q. Then after you had added those, you got what you considered to be the maximum estimate of the liabilities?
A. Yes sir; you are correct.
Q. Then you made your division according to the mileage?
A. Then we examined the assets,—that is your liabilities—we examined your liabilities to see what that was.
Q. But I want to get one side of this correct.
A. Well, you have it.
Q. Now then, as I understand it, you took the valuation as you determined it of the total issue of the stocks and bonds of the Union Pacific railroad.
A. The total liabilities as shown in Table 4 of your 6th Annual Report.
Q. Then, as I understand it, you took out from the items enumerated, those enumerated as current liabilities and deferred lia-
1246 bilities, and added that to the stock valuations?
A. I took the total figures given in your report there.
Q. But you have changed that some, because you have taken out current liabilities and deferred liabilities and added them to the value of the stock and bonds?
A. I think that is the value, because——
Q. Well, did you do that?
A. We considered—as I say, we considered your total liabilities as shown by Table 4 in your 6th Annual Report, you can call them off just as they are.
Q. And then what?
A. Then we considered your assets on the other side of the ledger.
Q. Did you just take those as they stand there?
A. We considered it as such.
Q. Did you make any change in it, in making up your judgment?
A. I don't quite understand you.
Q. I mean did you just take this as it appeared in Table 4?

A. We will find that out later. When you find what we assessed the road at, then you will see whether we made any changes or not.

Q. I have already got where you told what you assessed the tangible property at.

A. Yes sir.

Q. Now, I am trying the best I can to get at the method you adopted to assess the intangible property.

A. We took as much of those figures as shown in that Table, sufficient to make the value per mile of the road $55,000 per mile; if we had taken them all, we would have had a different result.

Q. How much different result?

1247 A. I haven't got the figures—probably I have them.

Q. All right, see if you have them there?

A. In computing the mileage, I had two figures, in one is included the Leavenworth branch of the system, which is operated I understand by the road through the ownership of its stocks and bonds; if you use that, I figure the miles at 5884 miles.

Q. Five thousand and what?

A. 5884. The value acording to these figures of each mile of road, including your stocks and bonds and other liabilities, or you may say what you call the value of your road, and other assets, outside of stocks and bonds—the value of your road per mile would be $91,800; if you leave out the Leavenworth branch the mileage will indicate 5719. At that rate, leaving that out, the value of the stocks and bonds at their face value—the face value of their liabilities will be $93,200, in round figures per mile.

Q. Now, without reference to mileage at all, but as to the sum that you divided by mileage, in order to get at that correctly in my mind, we must definitely understand what you mean when you enumerate under the head of current liabilities and deferred liabilities.

A. I can't make it any plainer, Mr. Baldwin, than by saying that the facts and figures are contained in Table 4, under "Total Assets and Liabilities."

Q. I say, for the purposes of this question I don't understand you at all, so therefore I have to be enlightened.

A. I may not understand you.

Q. You have enumerated under the head of deferred liabilities and current liabilities, and you have told me that you added them as a liability to the stocks and bonds, is that correct?

A. According to your figures here that is correct.

Q. Then, after you had added that to the stock and bond issue, you then had what you considered the value of the stock and

1248 bond issue of the Union Pacific, didn't you?

A. I didn't say that.

Q. Well, I am asking you that.

A. I say we had the value as shown in your table of the stock and bonds and other liabilities.

Q. Now, what other liabilities do you refer to?

A. Well, as I say, included in your table under deferred liabilities, current liabilities and contingent liabilities.

Q. You added those, did you?

A. They are added here; I didn't add them.

Q. I am talking about any separation you made, whether you did or not, of the total value of the stocks and bonds.

A. Why, we considered that as a whole.

Q. Well, you believed in the stock and bond issue as a value of the road?

A. It is not our only duty to use the stocks and bonds and other liabilities.

Q. You were an advocate all the time you were on the board of the way to find the value of the road by taking the stock and bond issue, weren't you, or were you?

A. Why, we considered that, certainly.

Q. But, when you were acting as a member of this board, you were an advocate of that method of assessing railroads, by taking their stock and bond issue and dividing it by their mileage to find their value per mile?

A. Yes sir; I was an advocate of that method, yes sir.

Q. That was your idea of the way to measure the value of the railroad?

A. Certainly.

1249 Q. You believed, as Mr. Rosewater did on that proposition, didn't you?

A. I didn't know what Mr. Rosewater believed.

Q. You didn't read the papers?

A. Yes sir.

Q. Didn't you know that he advocated that all the time?

A. I remember that he did advocate that.

Q. And don't you remember that he was before you and advocated that?

A. Yes sir.

Q. Didn't you read his editorials about that?

A. Yes sir.

Q. You knew what he contended all the time about that as a theory, or as a method of finding the value of a railroad?

A. Yes sir; according to his paper, yes sir.

Q. And he was pounding that pretty hard into you fellows?

A. Probably.

Q. Well, wasn't he now?

A. I don't think he was pounding any harder than your side to get us to accept a separate tangible value.

Q. But he had his paper——

A. Yes sir, and you had your agents to enlighten us.

Q. Have you got any more to say about our agents being there?

A. Why, I may have in the process of the examination, but not at the present time.

Q. Now then, advocating that, you took the stock and bond issue, and found what you thought was the stock and bond issue as shown by this report, and found the value of the railroad as an entirety according to that valuation so found, didn't you?

A. I found out what the value of the railroad was according to the stock and bonds.

1250 Q. You can answer my question yes or no; I don't want any more long discussion about it; it is not necessary.

A. Yes sir; not what the assessment was according to the stocks and bonds.

Q. But you found the valuation?

A. I found the valuation of the stocks and bonds, and that is verified by several others with the total amount of your stocks and bonds, aggregating about $93,000 per mile, on the whole system, which those figures bears out.

Q. Well, we will not go any further in that, because I have what we want, and there is no need of any further discussion about that?

A. Yes sir.

Q. Now, as far as this difference is concerned, that you found between tangible and intangible property, you cover that by the phrase "franchise"?

A. You can use that word if you want to.

Q. Is there any other word to be used for it?

A. I am not familiar enough with the English language to substitute any other words for it.

Q. You were undertaking to assess very valuable property, and it was a part of your business to understand what the franchise was, wasn't it?

A. Yes.

Q. And having property of great value to put an assessment upon, upon which to levy taxes, it became a part of your duty to understand what a franchise was, wasn't it. What is your conception of duty?

A. It was a part of my duty to find the value of the franchise.

Q. What is the franchise, then? You had to try to find that out.

A. I think that is covered.

Q. Yes—you are content with your answers to my ques-

1251 tions, as to what the franchise is, you think you have answered it by what you have said.

A. It is the value of the intangible property.

Q. What is the intangible property—you never have answered that yet, except by telling me that you found its value.

A. The intangible property is the difference between the estimated value, or the considered value of the tangible property, and what we assessed the road at.

Q. Mr. Mortensen, what you have just stated is a method of ascertaining the value of intangible property, is it not?

A. It is not only a method, but it is the way it was found out, yes sir.

Q. What is intangible property?

A. It is the difference, in my judgment, between the cost of producing that property, and the present value, or the value of the property at the time when we made the assessment.

Q. As an intangible or tangible property?

A. Beg your pardon.

Q. As intangible or tangible property?
A. No; that was assessed as tangible property.
Q. Is it tangible or intangible?
A. It is tangible.
Q. Is a house tangible or intangible property?
A. Beg your pardon.
Q. Is a house tangible or intangible property?
A. That is tangible property.
Q. Now, what is intangible property?
A. Intangible property, what I would call, will be the difference between what that house cost at the time it was built and what it was worth at the present time, or at the time it was assessed. If
1252 one of them corner buildings down here cost $50,000 to build, and it was worth $100,000 at the present time, that is the profit, or what you might call the difference between production and the present value.
Q. That is intangible property?
A. Well, you can consider it as such, I was considering it as such.
Q. Now, in determining the value of the railroad properties of the state, you of course, acted under the theory and idea that intangible property of the railroads was just as you have described here and illustrated by the house—the house illustration?
A. No, not necessarily. If that property was owned by a corporation it would be, but that is owned by an individual, and if it is owned by an individual it is always assessed as tangible property. The value is added from year to year.
Q. We think you assessed tangible and intangible property and got into such confusion that I am trying to get your idea of what you considered tangible and intangible. We take your judgment on the matter. I am asking you if when you proceeded to assess the railroads of this state your idea of intangible property was as you have indicated heretofore, and given in your illustration.
A. I will in answer to that say that you placed the value of your road, say at $24,000 per mile, when it is really worth $90,000; then the difference between the $24,000 and the $90,000 you may call intangible property and intangible value.
Q. Now, we understand one thing. We understand your definition of intangible property, and that of course governed you
1253 in your judgment as a member of the board?
A. It was considered.
Q. Well, that I say, was your idea of it, and certainly with this being your idea of it, it moved you in making up your judgment as to the value of this railroad, didn't it?
A. Most assuredly it did.
Q. Did you apply the same idea and theory of intangible property to private car companies?
A. I think the private car companies were assessed under a different basis and under a different law.
Q. I am talking now about sleeping car companies.
A. I will say that the statute provides that we must value them at their actual value.

Q. Mustn't you find the railroad value at its actual value?
A. The statute doesn't say so.
Q. What?
A. The statute makes it compulsory on us to consider more than the tangible property in assessing railroads, while it don't in regard to the Pullman cars.
Q. Well, you are to find the actual value of both, aren't you, whether specified by direct enumeration in the statute or not?
A. Well, I am sorry to say it ought to be that way, but if it is it wasn't followed up.
Q. Then you didn't find any value for the intangible property of sleeping car companies, did you?
A. We did not.
Q. Nor did you of any private car company?
A. No, I presume not; I was not very familiar with the value of car companies. I did study the Pullman some.
1254 Q. And in assessing or taking the value of any sleeping car companies or any private car companies you didn't assess any franchise?
A. We didn't as far as the Pullman is concerned.
Q. Well, that is the leading private car company, isn't it?
A. Yes sir.
Q. And you didn't assess any intangible property at all?
A. No sir.
Q. Nor did you, if there is any other private car company in the state doing business, you did not assess its intangible property?
A. I presume not. I was not so familiar with that business, with the private car companies as I was with the Pullman and I couldn't say.
Q. Mr. Mortensen, this is a copy of Exhibit 74, (handing the witness the paper referred to:) The Union Pacific in its schedule and sworn return to you stated that tools, materials and supplies were of the value of $664,374.00, at the time that you were making the assessment, not at any other time; and that was the enumerated list of its tools and materials, and the only information you had on the subject was the sworn statement of Mr. Scribner?
A. That was all.
Q. You increased it $45,097.69, upon what theory?
A. I suppose it was upon the theory that in our judgment it was worth that much more.
Q. What other evidence did you have as to our tools?
A. It was just our judgment in the matter.
Q. You had no other evidence Mr. Mortensen?
A. Neither has the assessor any evidence that the property assessed is actually worth so much, but it is his judgment, and it was
1255 our judgment that your property was worth that much more.
Q. Did you go and examine our tools all over our lines?
A. No; we didn't examine any tools.
Q. Did you get any information from anybody? If so, name him, that was competent and qualified to give you any testimony as to values?

A. That didn't have very much bearing on the case.

Q. Well, I think it had a great deal, and I am asking you what you did, you didn't think it made much difference, did you? That was your estimate of it?

A. That was my estimate of it.

Q. So you thought it didn't amount to anything at all by increasing that value without any evidence before you at all, except our sworn testimony to the value—and you increased that value $45,097.00 on tools alone, didn't you?

A. That's right.

Q. Now, don't you think that was arbitrary?

A. There is a good deal of arbitrary business conducted in order to assess property all over the state.

Q. I ask you, don't you think that act was arbitrary?

A. It was arbitrary.

Q. Why, of course it was, an arbitrary value.

A. Of very little importance in valuing it.

Q. You increased the value of our rolling stock from $3,028,069.00 as sworn to, and returned to you, to $3,785,086.25 or an increase of $757,017.25. What evidence did you have before you to make an increase of $757,017 on our rolling stock?

A. I don't admit that we made an increase. We consid-
1256 ered such an increase. You gathered from the assessment that we made a different finding on your tangible property, which we did not.

Q. Well, you say so; but I am getting some delicious facts that you did.

A. Well, that may.

Q. The rolling stock according to Exhibit 74 you assess on the main line at $2,606,562.00; the Omaha & Republican Valley branch at $398,494.00, and the Kearney and Black Hills branch at $23,013; a total of $3,028,069.00. You increased it to $3,785,086.25.

A. As a preliminary work to ascertaining the value of the tangible property, the figures on that property at some time or other during our deliberations were fixed at such value.

Q. According to this statement (indicating Exhibit 74)?

A. They were considered at such value.

Q. According to Exhibit No. 74?

A. Yes, sir.

Q. So then you increased——

A. Beg your pardon, I didn't get through; but in making the final assessments there is nothing to show—there is nothing in my knowledge nor in the knowledge of the board that the tangible property was assessed or fixed at that value or any other value.

Q. Now then, we have got that general conclusion of yours. Now then, we will get some facts. But we did return to you, under oath, by our proper officials, the property listed, the rolling stock, at $664,374.

A. Well, probably we assessed it at that for all you or I know.

1257 Q. Will you answer my question? I didn't ask you that. We will get to the argument in plenty of time. Examine this certificate, (indicating Exhibit 74.)

A. Yes sir; I have examined it.

Q. I say it shows $2,028,069.00; returned at that.

A. Yes sir.

Q. You have it here at——

A. What have we got there? We have some figures there.

Q. I mean, Exhibit 74.

A. Yes.

Q. Which you have already sworn were the figures you adopted in accordance with the resolution of Mr. Weston?

A. Yes sir. Beg your pardon, did I say that? We considered them as preliminary.

Q. I say you have already sworn, sir, that those were the figures you agreed on in accordance with that resolution as the value of the tangible property.

A. As preliminary work to ascertain the value of the road.

Q. Mr. Mortensen, state when and where, at any other time, you made any other enumeration of the tangible property of the Union Pacific and fixed the value of it?

A. We did not make any others.

Q. Now, then, it is a fact that up to this time you increased the rolling stock $757,017.21, didn't you?

A. I deny that.

Q. All right, now then, you deny that. That is just what I want you to say.

A. I deny that is a finding of the Board. We considered those figures.

1258 Q. I don't care what you considered at all. I limit myself to direct inquiries. I do say to you this, that you have already sworn, sir, haven't you, that these figures in Exhibit 74 were the figures you agreed upon as tangible property in accordance with the resolution of Mr. Weston, as the value of the tangible property?

A. As preliminary.

Q. Well, whatever that resolution is.

A. Yes, that is right, yes sir.

Q. The fact is that the difference between the value of the rolling stock as returned to you under oath, and what you agreed it to be, according to Exhibit 74, is $757,017.21?

A. No sir.

Q. Well, isn't it now?

A. No sir.

Q. You do not mean to swear to that, Mr. Mortensen?

A. I mean to say that that finding is not any more final than the finding of that value here according to this table, the total value of your road at $91,000 per mile.

Q. We will let you get that in as many times as you want to, and I will emphasize it that you have said it three or four times Now,

we will get at it: The Union Pacific returned the rolling stock to you under oath, at $3,785,086.25, didn't it?

A. I presume that is correct.

Q. Well, that is from the returns.

A. Yes.

Q. In accordance with the resolution presented by Mr. Weston, you, as shown by Exhibit 74, put the value up to that date anyway, at $3,785,086.25, didn't you?

A. Up to that date, yes sir.

Q. That is a difference of $757,017.21, isn't it?

1259 A. I presume that is correct.

Q. Well, that is correct?

A. Yes sir; that is correct.

Q. Did you at any time, any place, anywhere, in your meetings make another itemized statement of the valuation of the tangible property?

A. We did not make any special finding of it.

Q. Well, did you put it down like that?

A. No; I think not.

Q. Did you make any other resolution in reference to it, other than had already been made?

A. No sir.

Q. So then, you did have, in accordance with the Weston resolution, this difference in the amount of the value of the rolling stock of the Union Pacific, didn't you?

A. Well, it is no use for me to repeat it again, if it is the same answer.

Q. Now, I will stay here until next week but what you will answer that question.

A. According to Mr. Weston's resolution, you are absolutely correct.

Q. I say those are the figures, and I say you had no other; did you just make a hop, skip and a jump at it?

A. I presume there was something of that kind, or we might have found a different result.

Q. Did you have any other definite knowledge when you were making up your mind as to the rolling stock than that which you put down solemnly on this paper?

A. Well, that was not solemnly.

1260 Q. Would you more likely remember that figure than any other that would come to your mind?

A. I would remember it less, because it was a minor matter in my consideration.

Q. That didn't make any difference to you?

A. Yes; it made some difference.

Q. But it was a minor consideration?

A. It was quite a minor consideration.

Q. You didn't think much about that?

A. That is a fact.

Q. This which you say you did not think much about, was a raise

of $757,017.00. If that was done, it was arbitrarily done, wasn't it, just like the tools?

A. If it was done, it was arbitrary.

Q. You had no other evidence as to the amount and extent of our rolling stock, did you?

A. I didn't have.

Q. Well, did the board?

A. I can't speak for the Board.

Q. There wasn't any other evidence except what Mr. Scribner gave?

A. I don't know what the others had.

Q. Well, did they have any others?

A. I don't know.

Q. You all sat together on that Board?

A. Yes sir.

Q. You were all together when there was evidence being put in?

A. There was no other evidence before the board.

Q. Then, it was arbitrary wasn't it?

A. Well, I have admitted that.

Q. Well, I knew you would have to admit that before I got through with it.

1261 A. Well, I have admitted it several times.

Q. The buildings of the Union Pacific railroad were returned under oath to you at $958,609.00; you increased them in accordance with this resolution, as shown in Exhibit 74, to $1,198,261.25. You had no other evidence before you, did you, as to the number, character, size and extent of the buildings of the Union Pacific than as sworn to by Mr. Scribner?

A. That is all.

Q. And up to this time, when you took these figures and made these findings, in accordance with that resolution, you increased the value of the buildings, $239,652.25, didn't you?

A. According to that resolution, yes sir.

Q. Now, there isn't any difference between that and the rolling stock—that was a minor matter too, wasn't it?

A. It was when we came to make up the real value of the road, yes sir.

Q. You didn't pay much atetntion to it, did you?

A. We considered it, yes sir.

Q. *We* considered it enough to increase it, didn't you?

A. Yes sir.

Q. And without any other evidence, didn't you?

A. I presume it was our judgment of it.

Q. You didn't have any other enumeration of it?

A. That is all.

Q. Then that was arbitrary, wasn't it?

A. You can call it such, yes sir.

Q. Well, what do you call it?

A. Well, I presume it was our judgment at the time that that was a fair value of those buildings.

Q. You had no other evidence before you, and you didn't ask

for any other—you didn't ask us for any other evidence, did
1262 you?

A. No sir.

Q. Well, then, it was arbitrary, wasn't it?

A. Let's call it that, yes sir.

Q. Did you find the value of the Union Pacific main line separately from the branch lines?

A. No sir; we assessed it all as a System, found the value of the system; then we made the distribution afterwards.

Q. You didn't seek to ascertain the difference at all, if any existed, between the main line and the O & R. D. line, did you?

A. Why we certainly did, because we made a difference in the value of those two.

Q. When you came to distributing it?

A. Yes sir.

Q. But you did not when you came to make your consideration, did you; if you did, I wish you would let me know.

A. We assessed the whole system of the road—that is, we assessed and found the value of the whole system, and divided the valuation by the number of miles of the system.

Q. Yes; I -nderstand that was a general result, but I am asking you, did you seek or try to find the difference in the value of the stations on the O & R V and on the main line?

A. We surely must have found a difference. We must have had something to guide us by; either our own knowledge, or some information we had.

Q. What did you find the difference to be between the rails on the O & R D branch and the K & B H branch and the main line—what evidence did you have?

A. We had the knowledge.

1263 Q. What knowledge?

A. The knowledge we have as living in the state and knowing the territory that the roads run through, and knowing the number of trains and the traffic generally that passes over that road which makes the value of it.

Q. All you had was a general knowledge, wasn't it?

A. Yes, a general knowledge, yes sir.

Q. But when you came to the question of tangible property, you did not have, nor did you ask the company for any further information on the subject, or for any further evidence, did you?

A. That was all we had.

Q. So then, there was no effort made by the board to find the real value of the branch lines, was there?

A. Why, we was not assessing the road in different systems; we were finding the total value of the system, and then distributed the value according to our judgment.

Q. Now let me specify. I am not asking you that. I am asking you, did you use any individual distinct efforts to find the value of the branch lines?

A. Why, I don't remember whether we asked for any information or not.

Q. Did you ask anybody to come before you and tell you the value of the rails on the branch line, and the value of the main line?

A. That had already been furnished us.

Q. And the depots?

A. The depots as well.

Q. And the bridges?

A. Yes sir, the value of the right of way and the cost of
1264 grading, and so forth; that was all before us.

Q. Then you did have evidence before you to ascertain the value of the branch lines separately?

A. Yes sir.

Q. What did you find them to be?

A. We found them to be a different value than the main line.

Q. How did you find it out?

A. We based it on our own judgment and on the information we had.

Q. Did you have any evidence from which to find the value of the property on the main line, as distinguished from the value of the branch lines?

A. Why certainly, we must have had.

Q. When did you find it?

A. You are still getting at the difference between your value of the tangible property and our value?

Q. Yes.

A. Now that is the same on the main line, on the branches, or on the Omaha & Republican Valley, and also the Kearney and Black Hills.

Q. The value is the same, did I understand you to say?

A. Yes.

Q. That is the answer to that, is it?

A. Yes sir.

Q. Prior to the time you made the assessment, that is before you arrived at the actual making up of your minds, as to the value, had you discussed among yourselves the amount that the railroads of the state should be increased in assessment?

A. I don't know. If such a discussion was going on I never entered in to it. I thought it had nothing to do with it.

1265 Q. You had nothing whatever to do with the discussion that the railroads should be raised from fifty million to sixty million dollars?

A. Not in the least. I wasn't going to make up my mind as to the value of the road until I had considered everything, and I stated to the public generally that we were there assessing the railroads and whether the valuation would be forty million or fifty million had no bearing on it. We were trying to assess them at the true value as near as we were able to find out.

Q. That was the position you took?

A. That was the position I took.

Q. What did the other members—in discussing it, what position did they take?

A. I have no recollection.

Q. What?
A. I have no recollection.
Q. What?
A. I have no recollection.
Q. At all?
A. No sir.
Q. You swear you can't tell?
A. I swear that there was some talk about what Mr. Rosewater wanted and what this man wanted and that man wanted, but that had no effect on me, and I don't know whether it had on the rest of the Board.
Q. You are not answering for the mental processes of the other members of the Board?
A. No sir; but my judgment is as to all of us together, and
1266 I think I can state for the other members as well as myself.
Q. If the other members state that in compliance with the demands of Mr. Rosewater they had to increase it—if they say so—your judgment would have to be modified?
A. If I thought that was so, I would have to modify my judgment.
Q. The press, the Lincoln Evening News, the Journal, the Omaha Bee and the Omaha World-Herald were pounding the members of that Commission hard weren't they?
A. Yes sir.
Q. So much so that the Lincoln News itself said that it didn't see how you could under the pressure, be fair, didn't it?
A. I don't know; but it may be correct.
Q. It said absolutely that the pressure was so strong on you that it didn't see how you could act fairly, and that you were to blame for the muss yourselves?
A. I don't remember it.
Q. But the press was pounding you hard?
A. Yes sir.
Q. And the republicans were demanding that you increase the assessment to save the ticket; isn't it a fact that they were demanding that you increase the assessments of the railroads, or that the republican party would be involved?
A. I don't think so. I know they were demanding an increase in the valuation of the railroads, but not to save the ticket.
Q. Don't you know that the papers, the Lincoln Evening News, the Omaha World-Herald, the Omaha Bee, and other papers were demanding that you increase the assessment of the railroads to fifty or sixty million?
A. They were making some demands, of course.
1267 Q. Of course, I am not going to quibble with you about that—we have two volumes of those editorials.
A. I might say that I read them all, because I keep in touch.
Q. They were demanding that you increase it, weren't they?
A. Yes sir.
Q. And they threatened you if you didn't increase it?
A. I have no recollection of that; in fact, I paid no attention to that—I didn't pay any attention to it.

Q. I will go and get the volume and show them to you.

A. You don't need to; I——

Q. I want to know if you don't know that every edition of the papers in editorials and in articles were demanding that you increase these railroads to forty, fifty or sixty millions, and threatening you if you didn't do it?

A. If you say so, I will take it for granted. There was a good deal of agitation going on, but as to the recollection of the language that was used, I have none.

Q. Did you attend any of the conferences that were held by the leaders just before the republican state convention, at which you were re-nominated, about what the Commission ought to do about assessment?

A. No sir.

Q. Did any of these gentlemen call on you?

A. No sir.

Q. Didn't Ross Hammand?

A. No sir.

Q. Didn't W. H. Harrison?

A. No sir; none of those gentlemen ever mentioned it to me.

Q. You were in session at the time the state convention was being held?

1268 A. Yes sir.

Q. You were in session when it was held on May 18th?

A. Yes sir.

Q. And there were a great many representative men throughout the state attending the convention?

A. I had no knowledge of any conferences, or any pressure by the leaders of the party. There was nobody approached me directly or indirectly.

Q. You were in session at the time of the convention?

A. Yes sir.

Q. Don't you know, and can't you remember that the Omaha Bee was demanding that there be an increase to sixty million of this property?

A. Yes sir.

Q. And said that you would be false to your oaths and false to the people if you didn't do it?

A. Yes, we will admit that.

Q. Of course, it didn't affect you in the slightest degree, did it?

A. Yes; it affected me.

Q. Well, what do I understand by that?

A. It affected me to a certain degree, in that it made me study the facts and figures more, and maybe look up the facts, so I could do justice to all parties concerned.

Q. That is what it made you do?

A. Yes sir; that is what it made me do; it affected me.

Q. So you looked deeper *unto* it, and went deeper into the figures than you would have gone if it hadn't been for those editorials?

A. I presume that is right.

1269 Q. There was much diversity of opinion as to the stock and bond issue, as to taking the stock and bond issue, as a

method or theory upon which to ascertain the value of the railroads at the time, wasn't there?

A. There was some difference.

Q. But you took that theory, didn't you?

A. Yes sir; certainly.

Q. And didn't the Omaha Bee, frequently in the Daily and the Evening edition pound away on you members of the commission that the only way to assess this railroad was to assess it according to its stock and bond issue, and therefore it would amount to ninety five or a hundred thousand dollars a mile—didn't Mr. Rosewater press that vigorously?

A. He did press the increasing of the assessment.

Q. According to the stock and bond issue?

A. Yes sir.

Q. He advocated that?

A. Yes sir.

Q. And pressed it home to you members of the board, didn't he?

A. Yes sir.

Q. In the editorials, didn't he?

A. Why he did, of course.

Q. Why, of course, you know he did. And then, in those editorials, he insisted upon his theory as to the stock and bond issue, and also advised you and told you you must not listen to those railroad men, and those railroad agents, and those railroad attorneys, who were trying to throw dust in your eyes, as to the entire value of the railroads, didn't he?

A. Yes sir.

1270 Q. Yes, he did. Now, it turns out that you took the stock and bond issue theory?

A. Yes sir.

Q. As a method of determining the value of a railroad?

A. Yes sir.

Q. When you made your assessment, did you know what would be the value of all the other properties in the state?

A. No sir.

Q. You didn't?

A. No sir.

Q. On the grand assessment roll?

A. I think not.

Q. Well, but didn't you act upon the presumption, and assumption that the value of it would be four hundred million of dollars?

A. No sir; I never did.

Q. Wasn't that talked by the board, that the valuation of the grand assessment roll would be at least four hundred millions, and that therefore the railroads should be increased?

A. There was some guess-work.

Q. Talk, I mean, among the members of the board; there was talk among you that there would be four hundred millions on the grand assessment roll.

A. There was talk among the members of the board.

Q. What did you assume there would be on the grand assessment roll?

A. I didn't make any calculation on the assessment; I waited until the assessment was in before I passed my opinion as to what it would be.

Q. The assessment was not in at the time you made your valuation.

A. No sir; neither does it need to be. We didn't assess the
1271 railroads according to what other property was. It wasn't our duty to assess other property. It was our duty to find the value of the railroad property and assess it according to its value.

Q. And that is what you did? It was your duty just as you have said, and well said, it was your duty to find out the actual value of the railroad properties and assess them regardless of the valuation of other properties?

A. Yes sir.

Q. And that is what you did, didn't you?

A. No sir; if we had done that we would have increased the Union Pacific ten thousand dollars a mile, according to my judgment.

Q. Then you did take into consideration the value of other properties?

A. No sir; we did not; it was simply that we couldn't agree on putting it any higher than we did.

Q. Now, you have solemnly sworn here that you made the assessment or valuation rather, of the railroads of the state of Nebraska just according to the information you could get as to their values at the time, regardless of the valuation of other property in the state, haven't you?

A. As near as the five members who constituted the Board could do it.

Q. And you made it regardless of the valuations of other properties in the state, didn't you, as you have sworn?

A. Yes sir; that is right.

Q. And when you made the assessment, as a matter of fact you didn't know the value of the land you say, of the state of Nebraska?

1272 A. No sir.

Q. Nor the values of merchandise, or stock, or monies and credits, did you?

A. No sir; we assumed that it would be assessed at its full value according to the statute, and according to the revenue law which had been passed the previous year. We assumed that every county assessor and deputy assessor would do their duty like we had done.

Q. Were you assuming that they would assess it at the actual value?

A. Yes sir.

Q. Do I understand you to say that there was no talk of the grand assessment toll being four hundred millions?

A. Oh, there was a good deal of talk about it, and a good deal of guess-work about it.

Q. You paid no attention to that?

A. There was nothing to pay attention to; it was all in the air, and something that we knew nothing about.

Q. Now, when you get through, I'll ask a question. So, you found the valuation of the Union Pacific at fifty five thousand dollars a mile?

A. The Board found that valuation, yes sir.

Q. Well, I mean when I speak of you, I speak of you in your official character?

A. Yes sir.

Q. And you found that according to the stock and bond issue to be $65,092. did you?

A. We might have made those figures as preliminary figures; we had thousands of figures.

1273 Q. Well, when the matter finally came out of the hopper, you had gotten it at $65,000 a mile?

A. I presume that was the same hopper that brought the information that we has assessed the tangible property at $32,000 a mile.

Q. Well, all of these figures that you made were preliminary—what do you mean by preliminary?

A. I mean, it was all preliminary until we made the final finding.

Q. Now, once more I ask you: At any time during the session of the board, was it stated by any member of the board that the assessed valuation of all the property of the state, including the railroad properties would amount to four hundred million?

A. Why, there was a good deal of talk.

Q. Well, was that statement made?

A. Why, now, what do we understand by what was going on in the Board; it is necessary for me to remember all that we talked backwards and forwards, if it had no relation?

Q. Why, If you don't remember it, you can very readily say that.

A. I know there was some talk of that kind, but to what extent, I am unable to say.

Q. But there was talk of that kind?

A. There was talk of that kind.

Q. I asked you if there was considerable, and you said there was some talk about it.

A. There was some talk of it, yes.

Cross-examination.

By Attorney General BROWN:

1274 Q. Mr. Mortensen, how many weeks was that board engaged in considering the matter of the assessment of railroad properties at the session of 1904?

A. The record shows we were in session from May 2nd to August 1st, about three months.

Q. I am speaking now of the time you put in as a member of the Board of Assessment—of the time you put in as a Board of Assessment, about how long?

A. I presume we was about two months, wasn't it? About 2 months, I should think.

Q. How often did your Board meet in that time?

A. I have no recollection. We were in session pretty much all the time.

Q. From day to day?

A. Yes sir; we took recesses; I don't think we took any adjournments; we took recesses from day to day.

Q. At those meetings of your board, representatives appeared, representing the different railroad companies in the state?

A. Yes sir.

Q. Approximately, how many railroads are there in the state?

A. There is the Union Pacific, the Burlington, the Northwestern, the Missouri Pacific, and the Rock Island.

Q. How often did the tax agents of those companies appear before your Board?

A. I have no recollection.

Q. Were they there frequently?

A. They were there frequently, yes sir.

1275 Q. How much time did Mr. Scribner, representing the complainant in this case put in at Lincoln during the deliberations on this case?

A. I didn't keep any track of that.

Q. Was he there most of the time?

A. No; I don't think so, but he was there a good deal of the time.

Q. He was there, ready to furnish you any information that you would ask for that he could?

A. Yes sir. Sometimes he came there at our request to clear up some points that we were in the dark on.

Q. In addition to that, did the attorneys for the several railroads make arguments before your board?

A. Yes sir.

Q. Did the representatives of the complainant in this case argue the matter of the valuation of this property?

A. Yes sir; its representative was the tax agent, and——

Q. Did anyone appear to combat their arguments?

A. I think Mr. Rosewater was there.

Q. Anybody else?

A. I think the representative of the Commercial Club, Mr. Ure.

Q. From Omaha?

A. Yes sir; and some other members of the commercial club were present.

Q. Did they make more than one visit to the Board?

A. No; I think not.

Q. Was there any pressure brought by any individuals at all upon you or any member of the board, so far as you know, to overvalue the property of any railroad?

A. No sir.

1276 Q. Did anyone ever suggest to you, or any member of the board in your presence, that you should over-assess the railroads in this state?

A. No sir.

Q. Or any one of them?

A. No sir.

Q. Did you feel unfriendly towards the railroads?

A. No sir; had no occasion to feel unfriendly.

Q. Did any member of the board in deliberating on the question of values, express to you an intention or a purpose to over-assess the properties of the railroads?

A. No sir.

Q. I understand you to say to Mr. Baldwin that there was some talk with respect to what other properties in the state would be assessed at.

A. There was some guess-work, yes sir.

Q. Was the result of your investigation with respect to fixing the valuations for railroad properties governed at all by what other property might be assessed at?

A. No sir.

Q. Did you, or any other members of the board agree before you made any investigation to raise the railroad properties for assessment?

A. No sir; there was no agreement.

Q. When was the first time that the board came to an agreement with respect to the assessment of the complainant's property that year?

A. I don't remember the date.

1277 Q. The date is shown in the records?

A. Shown in the records.

Q. Up to the time your final resolution was passed, there was no agreement among you with respect to what the value should be?

A. There was a whole lot of tentative figures that we might consider one day and upset the next, but no final agreement until the final finding was taken.

Q. Now, the figures on Exhibit 74, I understand you to be, the estimate at the time, made by the Board, with respect to the physical property of this company in accordance with the Weston resolution?

A. They were tentative figures, yes sir.

Q. Was it understood at the time you were arriving at these figures that they were to be final in any respect.

—. ——.

Q. You mean by tangible property the physical property—the property of the railroad company that is in sight?

A. Yes sir.

Q. How came you to adopt the Weston resolution, and to make these figures?

A. Oh, it was supposed by Mr. Weston that as a beginning of our session, to begin our deliberations by considering the value of the tangible property, as provided by the new revenue law.

Q. This was the first year the new revenue law was in force?

A. Yes sir.

Q. Now, after considering the physical property, then your board took up the value of the road, according to the stock and bond test?

A. Yes sir.

Q. You considered that?

A. We considered that yes sir.

Q. About how long, if you remember, were you considering that test?

1278 A. I think we were considering that from the first day of our session, or nearly so, until we made the final finding.

Q. That never was the controlling test?

A. No sir.

Q. With the Board?

A. No sir.

Q. And under that test, you found the road to be, without giving them any of the deductions, to be about how much every mile?

A. From ninety one to ninety three thousand dollars.

Q. And after giving them the deductions that they asked for, on account of holdings in other companies, and stocks in other corporations, and other land and water assets, what was the value of the road per mile, acording to that test?

A. I don't know whether I have any facts and figures, but my recollection is, it was about $65,000 a mile.

Q. Now, after considering the stock and bond test, did you undertake to estimate the value of the road by any other tests?

A. Yes, we considered it by the net earnings test.

Q. Were the net earnings furnished you by the company, the complainant?

A. Yes sir.

Q. In this case?

A. Yes sir.

Q. As Exhibit 68-*g* in evidence?

A. Yes sir.

Q. The statement you refer to?

A. Yes sir.

Q. That shows the net earnings of the road in Nebraska, doesn't it?

1279 A. Yes sir.

Q. At what figure?

A. $5,560, and some cents.

Q. Now, Mr. Mortensen, state how you would reach the conclusion of the value of a road by that test?

A. By the capitalization.

Q. The capitalization of the net earnings?

A. Yes sir.

Q. At what per cent did the board conclude was a fair per cent to capitalize?

A. Well, some thought four, and some five and others six per cent.

Q. At six per cent, what would be the value of the road according to this return?

A. Something over ninety thousand dollars.

Q. Something over $90,000 per mile?

A. Yes sir.

Q. Then, after reaching these three different estimates of the value of the road, what did you do?

A. Well, then, it came to the time when we had to reconcile the differences of opinion between the different members of the board.

Q. And the result of that discussion and disagreement was what?

A. Well, we valued the system at $55,000 a mile.

Q. In this state?

A. Yes sir.

Q. And when you reached that conclusion, did you intend to give them credit, and not to assess any of the property that they held outside of this state?

A. We considered the whole system, whether in this state or not.

1280 Q. Answer the question now.

A. Well, I don't understand it.

Q. Well, let me ask you another question; when you fixed the value of the road at $55,000, were you fixing the value of it in this state?

A. Yes sir.

Q. Were you assessing any of the complainant's property outside of the state?

A. No sir.

Q. Did that conclusion of $55,000. in round numbers, per mile, represent your honest judgment with respect to the value of the property in this state?

A. It represented the judgment of the Board as agreed on.

Q. Well, individually, did it represent your judgment?

A. It was satisfactory to me, yes sir.

Q. As a matter of fact, you thought it was worth more, didn't you?

A. I thought it was worth more, yes sir.

Q. But you yielded to the judgment of the rest, and put it at $55,000 a mile?

A. Yes.

Q. Now, to go back to the 6th annual report, I wish you would turn to page 24, Table 4, and just explain in detail, how you reached the conclusion under that report of the company, that the road outside by the stock and bond test was worth about $90,000 a mile?

A. We examined that table very closely. We noticed an estimate of the road according to the figures of the company was $358,659,785., we also noticed that they had paid out for cost of ex-

1281 tensions, $910,000; we noticed they had stocks and bonds valued at $139,896,216. that was the capital assets; then they had capital assets that will amount to $499,590,230. in round figures. Is it necessary for me to go through all those figures?

Q. I want you to state as briefly as you can, how you reached the conclusion, from an examination of that table, that the property was worth in round numbers $90,000 per mile?

A. We reached the conclusion by examination of the outstanding stocks and bonds, and their value.

Q. Go ahead and explain under that table how you reached that conclusion.

A. Then we examined the current assets, consisting of money due

from agents and conductors	$614,644.00
Cash	1,908,558.00
From individuals and companies	444,841.00
Material, fuel and supplies	4,680,182.00

Traffic balances	184,498.00
United States Government for transportation	974,831.00
Loans to Southern Pacific Company	15,396,119.00
Bills Receivable	550,000.00
Dividend accrued to June 30th 1903, on a dividend on Northern Securities Coal Stock, payable August 1st, 1903	618,688.00
From miscellaneous resources	53,196.00
The total amounting to	$25,425,361.00

A. (Continued.) The Company also had what they called Deferred Assets, of a total amount of $12,055,793.00
Contingent Assets 3,317,060.00

1282 Q. Giving a total of how much?

A. Giving a total of $540,388,745.00.

Q. Now you deducted from these total assets as shown in the table, how much?

A. We considered for deduction, the amount of stocks and bonds owned as shown in the capital assets to be about a hundred and forty millions.

Q. And that divided by the total mileage of the system gave the average value per mile?

A. Giving them credit for property locally assessed.

Q. In addition to that deduction of $140,000,000.00, you gave them credit for property locally assessed did you?

A. According to the figures here, yes sir?

Q. Then, as I understand you, you made deductions from these assets of all the amounts asked for by the agents of this company?

A. Yes sir.

Q. And still the value of the road was over $90,000.00 per mile.

A. I beg your pardon—not for all they asked for, because there is a statement showing that they asked for more than this.

Q. For more than $140,000,000?

A. Yes sir, but we took their own figures as to the value of it.

Q. How much more?

A. That is their own figures as given in their 6th Annual Report.

Q. And what value did they put on it? what value did they put on them in that report?

A. About $140,000,000.

Q. Then you did give them credit for all they asked, didn't you?

A. No; I think there was a different claim presented before

1283 the Board by Mr. Scribner; I don't remember the exact figures, but I presume that is a part of the record there; a part of the case which you can hunt up and see.

Q. About how much difference was there between Scribner's demands for deductions and the value you found in this report?

A. I don't remember.

Q. Well, approximately; you can give the number of millions, can't you?

A. I cannot approximate it.

Q. In considering the value of the physical property, you testified that the board raised the value as put upon some of the physical property by the agent of the complainant?

A. We made some tentative figures to that effect.

Q. Did that increase over the value of it as put on the property by the agent of the complainant?

A. Yes sir.

Q. Did it represent in your judgment what the property was worth?

A. I had no judgment in the matter; I had no knowledge in the matter. I simply—it was the sense of the board that the tangible property ought to be raised so much, and I concurred in it.

Q. That was based on your general knowledge and information of the property, wasn't it?

A. Yes sir.

Q. Then you didn't mean to testify in answer to Judge Baldwin's question that the increase was arbitrary, did you?

A. Why, it was arbitrary in one sense; it was arbitrary in one sense, because it exceeded the amount that they gave us.

Q. But it represented the judgment of the board as to what it was worth?

1284 A. Yes sir; I testified to that before.

Q. All this physical property was itemized, wasn't it?

A. Yes sir.

Q. In the schedules?

A. Yes sir.

Q. As shown in Exhibit 68-*g*?

A. Yes sir.

Q. Covering hundreds of different items, wasn't it?

A. Yes sir.

Q. Those reports show the condition of this physical property and how long it has been in use, did they not?

A. Yes sir.

Q. And the quantity of the physical property you took as true as reported?

A. The qualities and so forth.

Q. And from your general information, and from the condition of the property, as shown by the report, the Board was of the opinion that some of it was worth more than what was returned by the agent?

A. Yes sir.

Q. Mr. Mortensen, do you remember of the session of the State Board that year as a Board of Equalization?

A. Yes sir.

Q. That was after the adjournment; after you assessed the railroads?

A. Yes sir.

Q. At that meeting you considered the valuations of other property in the state than railroads?

A. Yes sir.

1285 Q. As returned to your board by the several taxing officers of the state?

A. Yes sir.

Q. Were complaints made at that sitting of under-valuations?

A. Yes sir.

Q. Were those complaints heard by your Board?

A. Yes sir.

Q. And acted on?

A. Yes sir.

Q. Were they determined by the Board?

A. Yes sir.

Q. Did the complainant company make a complaint, do you recall?

A. I think the agent of the Chicago, Mil——

Q. Did the Union Pacific Railroad Company file a complaint before the Board alleging under-valuation of other property?

A. I have no recollection of it.

Q. I will ask you to refresh your recollection and state now whether the Union Pacific railroad company filed a complaint with the Board that year alleging under-valuation of other property?

A. I remember some complaints were filed, but I have no recollection of the Union Pacific.

Q. Of the specific ones?

A. No.

Q. Whatever complaints were filed were heard and determined, were they not?

A. Yes sir.

Q. Do you remember in a general way the result of the action of the deliberations of the board on that question?

1286 A. Yes sir.

Q. What did the board do?

A. The Board raised about some twenty odd counties from five to ten, and I don't know but what there was one, twenty per cent.

Q. Did it lower the valuations in any county?

A. Not one.

Q. When that judgment was rendered, did it represent the judgment of the board that other property than railroads had been assessed at its full valuation?

A. Yes sir.

Q. Now, I will ask you Mr. Mortensen, were you, or the Board, influenced by these newspaper articles, and this public clamor that Judge Baldwin has talked about when you arrived at your conclusion with respect to the valuation of railroad properties in this state?

A. No sir; I was not.

Q. Was the Board, so far as you know?

A. As far as I know, they were not.

Q. I will ask you, was there an effort made on the part of the other members of the board, as well as yourself to ascertain the actual value of the property under the new law that year.

A. I think we were all very anxious to ascertain the taxable value of all the railroads in the state, and used our best effort in that direction.

Redirect Examination.

By Judge BALDWIN:

Q. Let me understand you. Did I hear you swear that the Board was of the opinion, while sitting as a Board of Equalization,
1287 that all other property had been assessed at its actual value? Did I hear you so swear concerning all property other than railroad property?

A. Not that it had been assessed, but would be valued, not "had" but "would be."

The ATTORNEY GENERAL: I don't understand that.

The WITNESS: I understand it.

The ATTORNEY GENERAL: I don't think you do.

Q. Do I understand you as testifying here that when you got through with your work as a Board of Equalization that the Board was of the opinion that all property, other than railroad property had been valued at its actual value?

A. Yes sir; and for that purpose we made certain raises.

Q. And you say, then, it was at its actual value?

A. That was our judgment.

Q. All lands.

A. All lands.

Q. You swear that you came to that opinion in regard to lands?

A. From all the information?

Q. Well, you are talking about your judgment. You made up your judgment, didn't you?

A. I made up my judgment from my own county. I know that was assessed at the full value of the property.

Q. Mr. Mortensen, you have sworn here on cross-examination that when you got through sitting as a board of equalization that the Board was of the opinion that all property, other than railroads, had been valued at its actual value, didn't you, in answer to Attorney General Brown's questions?

A. Well, I don't remember.

1288 Q. Well, it was just a minute ago.

A. That may all be, but there are so many questions asked that I can't recall it.

Q. Well, Mr. Mortensen, didn't you testify here a moment ago in answer to a question of the Attorney General, that when you got through with your work that the valuation which you fixed on all other property in this state represented your honest judgment, with respect to the property in this state, that it had been valued at its actual value?

A. That was our judgment from the information we had.

Q. Well, I say, of course, that was your judgment?

A. That was our judgment according to our information.

Q. Well, that was your judgment?

A. Well, certainly we had something to base our judgment on.

Q. You found that lands had been assessed at actual value?

A. We found that according to our——

Q. Well, you found it, didn't you?

A. We found from the information we had received—each one of those county assessors were under oath to do their duty, and we found that they probably had some mistake in reporting to us, as well as the railroad company had in reporting the value of their property, and in certain counties we made certain raises, and when we got through, according to the best information we had, and according to our best judgment, that was the value of the property of the state.

Q. Now, then, we come back to my question: That was your judgment, that all property, other than railroads, had been valued at the actual value?

A. According to our information.

1289 Q. According to that, of course?

A. Yes sir.

Q. That was the kind of judgment you formed?

A. We formed that judgment from our best information.

Q. And you tried to get information?

A. Yes sir.

Q. It was your duty to get information, wasn't it?

A. Yes sir.

Q. And you wouldn't have discharged your duty unless you did get it, would you?

A. We did get it.

Q. You could have called for it.

A. We did call for it.

Q. And after you had fully discharged all your duty, then you swear that you found all other property, other than railroads was valued at its actual value?

A. Probably I might not have fully understood it, but I will modify that by saying, according to the best information that we found.

Q. It was your duty to get information, wasn't it?

A. Yes; I will say more than that——

Q. No, no; you must answer my question. It was your duty to get information?

A. We have only a certain way to get it.

Q. It was your duty to get it?

A. Yes sir.

Q. Did you get it?

A. Yes sir; we got it.

Q. And you acted on it?

A. Yes sir.

1290 Q. And when you got through exercising your judgment, you now swear that all other property, other than railroads, were valued at their actual value—at its actual value?

A. Yes; according to that information.

Q. Lands you found were valued at their actual value?

A. Yes sir.

Q. Monies and credits?

A. Yes sir.

Q. And merchandise?

A. Yes sir.

Q. And all such things as implements and household goods and pianos and such things as that?

A. Yes sir. I must say more——

Q. I don't want anything more than an answer to my question.

A. I just wish to say that we found also that the Union Pacific was assessed at from 60 to 70 per cent. of its full value, according to the stock and bond theory.

Q. And absolutely, it ought to be assessed for more, according to your judgment?

A. Yes sir; certainly.

Q. Therefore, you reduced it, didn't you—you were of the opinion that it ought to be assessed at $91,000?

A. If we had done justice.

Q. But you didn't do justice; you only assessed it at $55,000 per mile. That is your position is it, as an officer of the state?

A. It is my position. As a member of the board, you can't have your own way all the time; you can use your own judgment, but in acting together, we have to make certain concessions.

Q. Of course, you can put in your opinion as to the value of the Union Pacific, but when you get all through with that, I am
1291 testing your opinion of what the value of the Union Pacific would be, by testing your opinion as to the value of other property. I have you on record as saying that you had compared it, and had gotten information, and that you did get information, and that you found that lands, monies, credits, stock implements, household goods, and machinery, were valued at their actual value. Isn't that what you have testified to?

A. Just let me——

Q. Do you want to modify it?

A. No, I only want to modify it by saying——

Q. For instance that pianos were not assessed at actual value?

A. No; I want to modify it by saying that under the old statute we could not take into consideration simply the pianos, or the dogs, or any other property, we had to raise it or lower it as a whole.

Q. Are you through now?

A. Yes sir.

Q. Now, you were asked by the attorney general if anyone wanted you to over-value it, and you said no. Now, did any-one want you to assess it at $90,000 a mile.

A. No sir.

Q. Did anyone ask you to assess it at $65,000 per mile?

A. I don't know as anyone gave us any particular figures to assess it at.

Q. Why did you say that no one wanted you to over-value it? Suppose we show you that you have over-valued it $26,000, and another man comes in and says I want it valued at $75,000, but I don't want you to over-value it, wouldn't he naturally say that?

1292 A. I don't know.

Q. You answer the question—easily and quickly comes your reply—nobody wanted me to over-value it. It is a question of opinion, isn't it?

A. No sir; I don't think so.

Q. Supposing that we come in and ask you to value it at $50,000, and that we would say it was over-value?

A. Not according to our own judgment.

Q. Well, of course; there is quite a difference, That question of over-value depends on the opinion of the person who asked you to place the value upon it.

A. No, it depends upon facts and figures as represented here, as has been shown here, from the time I got on the stand, up to the present time.

Q. That is your judgment, but I think I have shown exactly the contrary, by your testimony. But, he asks you, did they ask you to over-value the property.

The ATTORNEY GENERAL: The defendants object to this for the reason that no question was asked the witness as to whether he was asked to over-value it?

A. What I understood him to say was, if anybody had asked me to over-value the property.

Q. You were asked distinctly by the Attorney General, "Did anybody ask you to over-value the property, or appear before you to get you to over-value it?"

A. I said, no, for the reason that nobody asked me to assess it any higher than what my judgment dictated to me to be my duty.

Q. Nobody said to you in argument, or in any manner
1293 that you ought to assess it on a valuation of $100,000 a mile?

A. Why no.

Q. Didn't Rosewater say you should, and didn't he threaten that you could not be renominated unless you did; didn't he threaten to defeat the republican party unless you did?

A. Of course, if you take it in a general way—I understood it to be as an individual matter with me.

Q. I am not talking about whether it affected you or not, but when you are asked, "Did anybody try to have you over-value the property," and you said "No," it comes back to what that person thinks is the value. I think you over-valued it one-third, but of course, that is just a difference of opinion.

A. That is just a difference of opinion, yes sir.

Q. Who drew up this resolution in which you fixed the valuation?

A. I think I filed the resolution.

Q. Why drew it?

A. I drew the original resolution.

Q. Is that your language?

A. It didn't suit them, and Mr. Weston under our instructions worded it just exactly as it is on the record.

Q. Mr. Weston prepared the resolution then?

A. He did not exactly prepare it.

Q. Who prepared it—what individual?

A. I prepared the original resolution. It didn't suit all the members, so Mr. Weston was asked to draw a new resolution to embody the same facts and figures that I have suggested.

Q. Then he did prepare it?

A. He did prepare it.
Q. Mr. Weston prepared it?
A. Yes sir.
1294 Q. Did Charlie Riggs have anything to do with the preparation of the resolution?
A. I have no idea.
Q. You were attending to your business, weren't you?
A. Yes sir.
Q. Did Charlie Riggs have anything to do with the preparation of the resolution that you know of?

The defendant objects to this as being immaterial.

A. I surely think it is immaterial. I shall say, not to my knowledge, Mr. Baldwin, and I shall take it as an insult to have it insinuated that he did.
Q. Well, if you don't know anything about it, that ends it, but I have a perfect right to ask you whether he did or not.
A. Yes, sir; that is right.
Q. Now, you say the railroad lawyers were there. Specify the railroad lawyers of the Union Pacific who were there. Name them.
A. Well, I don't know whether Mr. Scribner is a lawyer or not. He is the tax agent, and I think he is a pretty good lawyer—whether he has been admitted to the bar or not, I can't say.
Q. Now, you have stated the value, in an itemized way,—what you took into consideration when you made up the value of the stock and bond issue, and you based it entirely upon what appeared in the 6th Annual Report?
A. Oh, no, no.
Q. Where did you get any other items?
A. In regard to the stock and bond business?
Q. Yes.
1295 A. Of course, you submitted your own statement in addition to that.
Q. I say, did you take it from that 6th Annual Report?
A. Entirely, you say?
Q. Entirely.
A. No sir.
Q. You had other information?
A. We had information submitted by your company to the Board.
Q. And you took it then, from the evidence submitted by our Company, as you may phrase it, the Union Pacific—is that correct?
A. Yes sir; as shown by the reports to the Board and the 6th Annual Report of the Company.
Q. You had no other information, did you—you couldn't have it?
A. In regard to the stock and bonds?
Q. Yes?
A. We had information as to the value of those bonds.
Q. Other than this?
A. That don't give us any information as to the value.
Q. So, you don't know, and didn't know from this, whether these amounts so stated, are ledger amounts, or amounts just stating what was issued by the Company or not, do you?

A. Well, I have your own sworn report to the Board.

Q. I say, you got it from this report alone?

A. Not from the report alone, but from the report submitted to the Board, which must be correct, and which will indicate that this (indicating 6th Annual Report)—is correct, because it corresponds very nearly.

Q. With what?

1296 A. With one another.

Q. With one another—what do you mean?

A. I mean with the report made by your company to the State Board of Equalization and Assessment.

Q. When?

A. During the year 1904.

Q. Now, then, those were put in evidence before you at that time, the 6th Annual Report, which you have read, that was before you?

A. Yes sir.

Q. Now, look at what you have there?

A. Yes sir.

Q. And we put in, the statement—the sworn statement of Mr. Scribner and Mr. Mahl, didn't we?

A. Yes sir.

Q. Now, what other information did you have from the company?

A. You mean with regard to the bonds?

Q. Yes.

A. That was all.

Q. And that was what you based your estimate of the valuation on?

A. It was what we considered as one of the items in ascertaining the valuation for assessment of your System.

Q. It is one of the elements you considered?

A. Yes sir.

Q. What other elements did you have?

A. We had the net earnings—we had your assets, and we had your evidence in your report——

Q. Yes; that is good.

1297 A. Of what you valued the road at, and all the tangible property you had, monies and credits, and so forth.

Q. I say, the evidence, was the evidence put in by the Union Pacific itself?

A. Yes sir.

Q. That you based it upon?

A. Yes sir.

Q. Now, the capitalization of the earnings of the Union Pacific, you took that into consideration?

A. Yes sir.

Q. How did you capitalize the earnings?

A. Why, we didn't make any findings on capitalization. We took into consideration the net earnings, capitalized at a certain per cent.

Q. But, you got the net earnings from the report of the Union Pacific, didn't you?

A. Yes sir.

Q. Where did you get it in the report?

A. Beg your pardon.

Q. Where did you get it in the report—what part of the report? I ask you to examine Exhibit 68-*g*.

A. Yes sir, (examining the Exhibit referred to.)

Q. Now, sir, after examining that, state the amount which you took into consideration as net earnings of the Union Pacific in the State of Nebraska?

A. $5,566.00 per mile.

Q. That was your basis? Of course, you had to take this statement. You had no other information, did you?

A. No sir.

1298 Q. In forming one of the tests of the valuation of this road, you based it upon the earnings of $5566.82 per mile?

A. Yes sir.

Q. That is the figure you took, didn't you as a basis for capitalization?

A. We considered those figures as a basis.

Q. You have attempted to show here that you took the stock and bond issue—you took that into consideration, and you took into consideration the capitalization of the earnings—is that correct?

A. If you mean to say that we made a finding on that, you are surely off.

Q. No; I say you took it into consideration.

A. Yes sir.

Q. Now, I am trying to arrive at how you capitalized these earnings. You have said you capitalized net earnings in the state of Nebraska, which were $5566.82 per mile.

A. I said we took into consideration for capitalization the amount of net earnings as submitted and shown by your report.

Q. You could not make a capitalization on any other theory. If you are going to make a capitalization on earnings, you have to take net earnings?

A. Yes sir.

Q. So, there was only one basis that you took, and that was $5566.82 in this state?

A. Yes sir.

Q. And that was your basis, wasn't it?

A. That was the basis.

Q. You knew at the same time that that represented inter-

1299 state traffic, a good part of it, didn't you?

A. Now, we are getting into something that the Courts better decide.

Q. The $5566.82 was the net earnings you based the capitalization on, wasn't it?

A. But we didn't assess it on that.

Q. I know you didn't; that is I know you say you didn't.

A. Well, we didn't, and you know it, too, because, if we had assessed it at that it would have been over $90,000 per mile.

Q. That is the way you got at the $90,000 a mile, but don't you know that that $5566.82 per mile, not only is the net earnings in the

state of Nebraska, but that that is the interstate business. Dis you take that into consideration?

A. We will simply leave that for the lawyers to decide.

Q. Now, I am going to show by your own statement, that you didn't take into consideration the important factors in it. You took into consideration as your basis, the 5586.82?

A. According to your report.

Q. That is the basis, and you couldn't have taken any other figure, could you?

A. Yes sir; we took that.

Q. How much was inter-state business?

A. I don't know.

Q. How much did you take for the Omaha and Republican Valley company earnings?

A. We took in the whole system.

Q. You know that the Omaha & Republican Valley branch doesn't pay, and we have no earnings from it?

A. Well, now, we——

1300 Q. I am testing your knowledge, and have a right to go to the Court and show how much you know about it, and I am going to do it. Don't you know that we have no net earnings from our real intra-state business in the state of Nebraska?

A. When an assessor assesses a man's real estate he don't divide it up; they assess it as a whole.

Q. You were asked as to whether you honestly came by this judgment, and of course, you said yes.

A. Yes sir; I repeat that.

Q. And you also said that you spoke for the other members as to what they did?

A. As far as my knowledge goes, yes sir.

Q. Of course, you don't intend to swear here what extrinsic influences might have been brought to bear on the other members of the Board?

A. Not at all.

Q. Nor what might have affected them in their conduct?

A. No sir.

Q. You don't know what Governor Mickey might have felt under the attack and threats that he must make this assessment at so much, or be defeated, do you—that statement of yours was simply one from general observation?

A. That was all.

Q. You would not pretend to tell what the mental processes were of your associates?

A. No sir; not in the least.

Q. You are only speaking for yourself, that you honestly sought to get at the actual value of these railroads?

A. Yes sir.

1301 Q. That that was your honest purpose and endeavor.

A. Yes sir.

Q. In speaking for others, it was simply a matter of opinion?

A. That is all.

Recross-examination.

By Attorney General BROWN:

Q. Mr. Mortensen, when you were considering the stock and bond test, you were undertaking to find the value of the railroad, were you not?

A. According to the value of the stocks and bonds.

Q. It was not your purpose by using that test to find the value of the franchise, or the intangible property alone, but the value of the entire road?

A. The entire road—the entire system.

Q. And that same thing is true with respect to the net earnings test, isn't it?

A. Certainly.

Redirect examination.

By Judge BALDWIN:

Q. Mr. Mortensen, if half the mileage of the railroad, is in the state of Nebraska, would you fix the value of that half at one half the value of the whole road, as shown by the stocks and bonds?

A. That would depend on the showing you made on the value of the net earnings of the value of the stocks and bonds. I can't say what I would do if conditions were different.

Q. What division or distinction did you make as to the
1302 value of the stocks and bonds as to that portion of it in the state of Nebraska?

A. I made no division.

Q. You made no separations?

A. I took it over the whole system, from the fact that we were notified by Mr. Scribner that your company was not able to make any divisions.

Q. And because of the fact of its inability to make a separation you took it on the whole System?

A. Yes sir.

Q. That is, all the properties that the stocks and bonds were issued for, Mr. Mortensen?

A. Yes sir.

Q. For instance, eighty millions of the Northern Securities Company, Southern Pacific ninety millions—of course, you know the stock and bonds you figured out covered that?

A. Certainly.

Q. So you made no division or separation of the stocks and bonds as covering Nebraska, if it was of less or more value, as covering other property, as for instance, the Southern Pacific, the Northern Securities Company, the Green River Water Company, the Union Pacific Coal Company—you drew no distinction?

A. We drew no distinction, Mr. Baldwin. If this property was an income to you, or a detriment to you, an expense to you, such as your water property is, it showed itself in the value of the stocks and bonds.

Q. But, how could you tell in ascertaining the value of the stock and bonds when it was issued and covered so many properties, as to the value, for instance, in this state, which would be subject
1303 — your jurisdiction, and were covering other properties which were not subject to your jurisdiction—properties for instance like the Union Land Company, where it is assessed locally?

A. That is a part of the property of your corporation, isn't it.

Q. Yes sir, but you made no distinction.

A. We certainly took that into consideration.

Q. You said you could not, because we said we couldn't separate it.

A. You said you couldn't separate the Oregon Short Line, or the Oregon Railway & Navigation Company, from the Union Pacific proper, and you also reported that you were not able to get any value of the stocks and bonds which you held in outside companies.

Q. That is the stocks and bonds of other companies. We did, of our own company. Suppose these stocks and bonds that are issued by the Union Pacific covered much more valuable property than that part of its line—that is, out of this state you made no distinction, did you?

A. We took the system as a unit.

Q. Suppose the stocks and bonds covered much more valuable property. Suppose it had taken under its right, as an incident to the operation of its road vast coal mi*l*es and oil wells, you made no distinction?

A. We made a distinction, as I say, in one respect. I- considering the value of your stocks and bonds, and of your net earnings, it shows the total income. If you have property that is not profitable, it shows a loss.

1304 Q. Was it profitable—did you find out whether the Southern Pacific was profitable?

A. I suppose you get a certain rate of interest from your holdings.

Q. Did you find that the Oregon Short Line was profitable? Did you find that the Union Pacific Coal Company was profitable?

A. It was not our business to inquire into it.

Q. It was not your business, and therefore you didn't inquire into it, did*n't* you?

A. Into those individual matters, no.

Q. Therefore, you made no separation or distinction, did you?

A. No; only as far as to affect*s* the value of your stocks and bonds and your net earnings.

Q. Well, you got net earnings and gross?

A. Yes sir.

Q. And you got earnings, gross, in and out of the state, didn't you?

A. Yes sir.

Q. Now then, that affected all of the issues of stocks and bonds, and these stocks and bonds covered property in some states that is more valuable than it is in other states, but you made no inquiry as to whether that portion of the bonds covering the property in this state was more or less valuable than property covered by them in other states?

A. That is right, I think, too.

Q. What did you find as to the Southern Pacific?

A. We found that you had an interest in the Southern Pacific, you had about ninety million dollars' worth of stock in the Southern Pacific; we considered that as a part of the hundred and forty-

1305 nine million.

Q. You didn't separate it, because we said we couldn't?

A. You were mentioning your industrial enterprises, your industrials I am sure we couldn't enter into them, because we had no knowledge of them. You spoke of your water works, your coal mines, and other industrial matters. If you held some bonds in some of those industrial enterprises, they are property of the company.

Q. And so, inasmuch as we couldn't separate them, you considered them as a whole?

A. If you couldn't separate them, neither did we.

Q. Therefore, you considered them as a whole, didn't you?

A. Yes sir.

Q. And regardless of the fact whether this property out of the state was of more or less value than the property covered by them in this state—did you separate them?

A. No sir; we took them as a whole.

Q. You couldn't separate them, so you took them as a whole?

A. Yes sir.

Recross-examination.

By Attorney General BROWN:

Q. But you made deduction for these holdings in other companies?

A. Why, that shows for itself.

Q. Well, you did, did you?

A. We did, and our actions show it. The difference between $55,000 and $90,000 or ninety odd thousand dollars a mile, shows that there was some deductions made.

1306 Redirect examination.

By Judge BALDWIN:

Q. That is the only evidence you can give of it, is it?

A. That is a good deal.

Q. That is the only evidence you can give of the deduction, is the difference in the value? I ask, Mr. Mortensen, that you make—you have given it in a general way, in your statement, but I ask that you prepare during the evening, a statement of what you took into consideration and how you arrived at it?

A. I shall surely object to doing it, because it is over a year ago, and I can't do it justice, and I wouldn't be able to do it if I tried.

Q. You have testified that you took it from our records, and we have given you the same records.

A. Individually, am I responsible for the judgment of the rest of the members of the Board, which judgment was considered in making the finding just as much as my own was?

Q. The witness is asked this: Mr. Mortensen, you have testified that you made this up, your statement of the stocks and bond issue and division of valuation, from annual report No. 6, the 6th annual report, and I ask you now to prepare a statement of the same as you did when you made the assessment, and in the same manner, and give it to us tomorrow morning, if possible, if not, at such further time as you can.

A. I am in the same position that your Mr. Scribner was in when he went to New York to get information from your company and they were not able to give it to him. Neither am I able to
1307 give the facts and figures as to the exact figures used in making up the assessment.

Q. Then you say now, it is absolutely impossible for you to make a statement of the figures and facts that you took into consideration from the 6th Annual Report ending June 30th, 1903, Page 24, Table 4, about which you have testified before, and about which you have sworn repeatedly that it shows for itself and we ought to know it, that is, alluding to the Union Pacific officials—is that correct?

A. I repeat that I am not able to give any more facts and figures than what I have already given.

Q. So for that reason, you are unable to make this statement for us?

A. I certainly am, yes sir; and I don't think it is proper.

Witness excused.

1308 Governor JOHN H. MICKEY, is here re-called for a continuation of his examination, which examination was as follows:

Direct examination.

By JOHN N. BALDWIN, Esq.:

JUDGE BALDWIN: Mr. Reporter, please read the last question and answer of the witness, which question was asked and answer given just before the witnes left the stand.

The question and answer referred to are read, as follows:

"Q. Now then, if you have any recollection on the subject at all, wasn't the information you sought a valuation of the different properties of this capitalization, for instance, the Green River Water works Company, and the land company, and that is the information that he couldn't obtain for you?"

"A. I would have to answer that there was certain information that he couldn't obtain and didn't obtain at New York."

Q. Then did you obtain the information from any other source?

A. I think not.

Q. Then you didn't have it at all?

A. The best we could get, from what we had, the reports, Poor's Manual, and Clews', and the statements that were made, all we had.

Q. You have enumerated those now?
A. Yes.
Q. And that is all that you had?
A. Yes, yes, yes.
Q. Now, did Treasurer Mortensen figure out the stock and bond issue for you?
1309 A. Why, Treasurer Mortensen made figures, yes sir; the same as others did.
Q. Did you make any?
A. Yes sir.
Q. Did you make any on the stock and bond issue?
A. Yes sir.
Q. Where did you get your information?
A. From those reports.
Q. And on that you made a computation of the value of the road according to the stock and bond issue?
A. Why yes, we took that into consideration, to arrive at the value of the road.
Q. I am asking you what you did.
A. I am speaking of myself.
Q. Yes, but you said that you made your computation.
A. We worked jointly and separately, sometimes; that is, we had hours to ourselves that we did lots of work on the matter.
Q. Did you make a computation on the stock and bond issue? Treasurer Mortensen said he did. Did you?
A. Yes sir; as near as I could; I made estimates of what it amounted to, yes.
Q. What did you find it to be?
A. My recollection is that I said yesterday that it was between ninety and ninety-five thousand dollars—over ninety thousand dollars and something.
Q. Well, you valued it at $55,000 per mile,
A. After making the deductions that the road asked for.
Q. What deductions did you make?
A. The list, I suppose, is given here.
Q. Not what you suppose, but what did you deduct?
A. I can't remember every item that was deducted. Mr.
1310 Scribner submitted items that he claimed should be deducted
Q. Did you deduct all those?
A. My recollection is that we did.
Q. And after the deduction, you found the value of the road, according to the stock and bond issue to be $95,000 per mile?
A. No sir; after the deductions, we found it to be valued at $65,000 per mile.
Q. $65,000?
A. Yes sir.
Q. After the deductions?
A. Yes sir; and I might add this, that it was difficult to ascertain the value of those deductions.
Q. Mr. Mortensen swore that he made his computations according to the 6th annual report of the Union Pacific for the year

ending June 30th, 1903, from Page 24, Table 4, did you do that too?

A. I think the company submitted that book and called our attention to that, and that was considered, but not perhaps to arrive at the definite conclusion of the valuation, but it was considered in the matter.

Q. Governor Mickey, did you make your computation, which you found to be $90,000 a mile from Exhibit 68-*a*, being this 6th Annual Report of the Union Pacific for the year ending June 30th, 1903?

A. The annual report was tak*ing* into consideration in ascertaining the value of the stocks and bonds.

Q. Did you make your computation from that—not what you took into consideration—not what your judgment was, but did you make your computation from that?

1311 A. Partially, with other matters considered.

Q. What other matters?

A. Reports were considered.

Q. What other reports?

A. Poor's Manual and Clews'.

Q. You say that they agreed?

A. Yes sir.

Q. There wasn't any difference between them?

A. Didn't seem to be, no sir.

Q. And you confined your computation to that, did you?

A. And to those other reports of yours?

Q. To all three?

A. I will answer that by saying they were all considered in connection with arriving at a conclusion as to value.

Q. Did you make your computation for the stock and bond issue from the report of the Union Pacific, Clew's report and Poor's Manual, or not?

A. I should answer that we did.

Q. What did YOU do, not what WE did?

A. I should answer that I arrived at that conclusion from the information given.

Q. I am asking you, did you make your computations as to the value of the stocks and bonds from those reports?

A. I would answer yes.

Q. Was there any other statement of the tangible property made by direction of the Board and filed then, as Exhibit 74, (handing witness Exhibit 74). You know what that is?

A. I don't recall anything there except that by Mr. Scribner, but that wasn't made by the Board.

1312 Q. Oh no; I am talking about the statement that was furnished, the tentative agreement as you say, or finding as to the value of the tangible property, Exhibit 74, as the finding of the Board as to the tangible property of the Union Pacific railroad.

A. I think I could answer that by saying that there were a great many tables made of figures, different ones, by members of the Board, and they were filed perhaps just as much as that was filed.

Q. Made by the Board?

A. Different members of the Board, and presented to the Board.

Q. Then you don't agree with Treasurer Mortensen that this was the one and the only one the Board agreed on?

A. I think there was at least a dozen different statements of numbers and figures—we put in a great many weeks' work on this.

Q. It has been testified in this case, and admitted, that the Exhibit 74 was the tabulated statement of values of the tangible property found by the board, in accordance with the Weston resolution. With that preliminary statement, I ask you if there was any other statement officially made by the Board in accordance with that resolution—if so, state where it is and what it was.

A. I understood your question before to relate to the valuation of the road.

Q. No matter what my other question was—please answer this last one.

A. And that was in answer to that question.

Q. Please answer this one.

A. As to the tangible value, that is perhaps the conclu-
1313 sion of the Board.

Q. Of course, there is no dispute as to that.

A. But I understood your other question to apply to the value of the road.

Q. Governor Mickey, the returns under oath of the Union Pacific railroad company of tools, materials and supplies was $664,374.00; was there any evidence before the Board as to the amount, character and description of that property belonging to the Union Pacific, other than that which was filed by the company?

A. Not that I know of—I think not.

Q. Governor Mickey, the Board increased the valuation of tools, materials and supplies, to $709,471.69, or an increase over tools and materials of $45,097.69. That was the result of an arbitrary increase in valuation of that property, wasn't it?

A. My recollection is that the Board based their action in that matter on the values of the depots and other property, which was insured, which was claimed to be insured for three fourths of its value——

Q. I am not talking about depots at all——

A. Wait until I get through, and I will answer your question.

Q. I supposed you were through.

A. No.

Q. I beg your pardon.

A. I wish to be understood to answer the question fairly. And the conclusion of the Board was that if that was the valuation on the depots and other insurable property, that perhaps they had made
the same calculation, as I have stated of the other, allowing
1314 for a decrease, wear and so forth, and I think Mr. Scribner testified to that fact before the Board. That was a conservative value placed upon the other property.

Q. Now, I understand you to say that because you found that the depots and buildings were insured for three quarters of their

value only, that therefore, they were of the opinion that the value should be reduced to the amount of the insurance?

A. My impression is that it looked as though the representatives had made a low valuation on their property.

Q. That is your opinion. Now, we will try to get the facts, the same as we got from Treasurer Mortensen yesterday. You have sworn that you had no other information as to the amount, character and description of the tools, materials and supplies of the Union Pacific. It was returned under oath to you at $664,374. Without any other proof as to the description or character or value, you increased it to $709,471.69, or $45,097.65 increase. I now ask you, what is that—a result, wasn't it, of an arbitrary increase of the valuation of the tools?

A. It was the action of the Board and their judgment was justified about that valuation.

Q. You do not agree then with Treasurer Mortensen when he testified that it was an arbitrary increase?

A. I don't know what you mean by an arbitrary increase.

The ATTORNEY GENERAL: The defendants object to any further cross-examination on the assumption that Treasurer Mortensen testified to certain facts.

Judge BALDWIN: Well, let Governor Mickey take his own position on that.

1315 A. Well, I should answer that it was arbitrary in the sense that we, of course, didn't do what the railroads wanted done. We used our best judgment as to the value, after obtaining all the information that was obtainable from them and elsewhere, both as to the tangible property and the intangible property.

Q. Now, I didn't say anything about intangible property at all, but I am asking you now, and you can put yourself on record either way you want to—that you did absolutely find the value of the tangible property of the Union Pacific railroad, and you found the tools and materials and supplies at $709,451.69 or an increase over the sworn returns and list of this property by the company of $45,097.69; and now, I ask you who it was testified, or what paper there was before you that in any way differed from that list in character, description or value, and under your oath, give it us.

A. Well, from the statement of Mr. Scribner, made before the Board, as to the valuation of this, and other property the Board felt it was a low valuation sworn to by the road.

Q. Now then, if my questions are unintelligible I wish you would suggest them to me in a way that you can understand them, so that I can get an intelligible answer. It is not what you valued it at, or what your judgment was, but I have asked you to swear what evidence you had from the lips of any witness, or from any document filed before you, which in anyway modified the sworn statement of Mr. Scribner, as to the list, character and value of the tools of the Union Pacific.

A. I have answered that.

Q. Now you haven't, and I ask it again.

A. Because, I said that Mr. Scribner's statement before the
1316 board as to the depots and insurable property—that the company carried insurance to the amount of three quarters of the value and all other property was listed on that basis, he said.

Q. Any other evidence?

A. And the sworn statement made by——

Q. Mr. Scribner?

A. Yes, sir.

Q. That is all you had, wasn't it?

A. Yes, sir.

Q. Now, I am correct on that; now, if there is anything else, swear to it.

A. No, we didn't go out and examine the property.

Q. Well, you didn't have any other evidence, did you?

A. Well, I think I have said that three times.

Q. No you haven't; you always modify it.

A. That is your version of it.

Q. Well, I will stand by the record.

A. So will I.

Q. You did not have anything then, in the shape of evidence before you to make that valuation upon, except what was afforded by Mr. Scribner himself?

A. Yes——

Q. And therefore on Mr. Scribner's testimony in this matter, you increased the value of the tools $45,097.69; that is correct, isn't it?

A. I can's say as to the figures, because I don't remember.

Q. Well, I am assuming that these figures are correct—I can't have any question about that—I mean Exhibit 74, or the returns of the Union Pacific agent, as to tools, materials and supplies, was
1317 $664,374.00. Now then, if there is any question about that I want to have those figures; I want to know of the Attorney General if I have to go on and detail those figures and talk for an hour to put that in evidence when it is admitted.

The Attorney General: I don't think there is any misunderstanding about that. The figures are there and show for themselves.

Q. That valuation as made by the Board is $709,471.69, or an increase of $45,097.69, which you made upon the testimony of Mr. Scribner, is that correct?

A. Well, I don't remember the figures that were made, and I can't swear definitely as to the exact figures because I have not consulted it since the time, but my recollection is that there was an increase; but as to the exact amount I am not able to say, but if there was any increase, it was based upon the testimony and admission of Mr. Scribner in explaining their returns which were filed before the board.

Q. Which you have heretofore enumerated?

A. Well, I am answering the question.

Q. I can't let you make a dissertation on this question. I must have a direct answer; how much are you going to expatiate on this?

A. I think I am fair in answering the question.

Q. I don't say that you are unfair, but I say that you are making a long and meaningless dissertation on this subject.

A. Well, the question is long.

Q. Well, the question has been repeated to you several times.

A. Yes; I asked him to read the question, and it is a very
1318 long question.

Q. Well, take your time if you don't understand it.

A. And as I said before, it was admitted by Mr. Scribner that the valuations of depots and other insurable property were listed at the amount they were insured for, and other property was listed on the same basis.

Q. Governor Mickey, do you mean to swear that Mr. Scribner stated to this Board that the valuation was made upon the insurance that was placed on it?

A. That is my recollection as to the insured property—the depots.

Q. That the return, as scheduled, the valuation of this property was made on what they had insured it for?

A. And I think the other roads did the same.

Q. We are talking about the Union Pacific. I don't care about the other roads.

A. I remember distinctly that the question was raised before the board and the statement was made and admitted that that was the basis and ground on which the valuation was made.

Q. Did Mr. Scribner place the valuation of the tools and materials of the Union Pacific upon the value for which it was insured.

A. My recollection is as I said, that he placed that conservative valuation on all the property.

Q. Do you swear that Scribner stated that?

A. That is my recollection, yes, sir, went over all this tangible property with him. He filed afterwards a statement showing the tangible value, and I think it was about $32,000 a mile, not with this report, but filed afterwards.

Q. I don't think that has anything to do with the question,
1319 but go on; I haven't asked you about the mileage at all, but I am seeking information as to what you had as to the description, list, character and value of the tools, which you did value according to Exhibit 74. Now, you say you increased it $45,079 because Mr. Scribner stated that he returned it at the value it had been insured for.

A. No; I didn't say that on the tools.

Q. Well, then; what is all this testimony you have been giving as to his statements as to value. You did it then because he stated that on the tangible property?

A. The intimation was that his valuation was conservative, the same as in the other property I mentioned.

Q. Governor Mickey, you have testified absolutely here that you increased the valuation of the tools and materials of the Union Pacific in the amount of $45,079, on the returns as made by Mr. Scribner, and on Mr. Scribner's admission that he had made his return of the valuation of the tools, on the basis of its insured value; that is, the value of the insurance that had been placed on it.

A. I don't think I did.

Q. You didn't say that, did you?

A. I referred to the insurable property.

Q. I say, you didn't say that?

A. No, sir; not on the table, because I didn't understand that you carried any insurance on the tools.

Q. If perchance, it does appear, that in these questions I have repeatedly asked you, this will be testing your memory and competency. Read this return with reference to the tools. You now say you didn't say that this increase was made on the return
1320 of Mr. Scribner, but because of the fact that he had placed the returns of the personal property, the tangible property of the Union Pacific, on the value it was insured for?

A. I didn't intimate that the tools were insured, but I did say that other property that was insured, was listed for the amount that it was insured for.

Q. You have sworn to that?

A. Yes, sir.

Q. And you have sworn that Mr. Scribner so stated it to you.

A. Yes; well, I said that the testimony was before the Board.

Q. You have sworn that Scribner stated it. If that is so, and for the purposes of this statement, I will take what you say to be true—you did increase the value of the tools this forty five thousand dollars, because Mr. Scribner had stated that the value of other property had been placed upon it at the value it was insured for?

A. I will testify that the information before the Board was considered, and that the raise on these items of personal property was made because they thought a conservative valuation was placed upon it by the roads, and therefore they were low.

Q. Now, you have heretofore testified, when I attempted to get from you an analysis of what you took into consideration, that the only evidence you had was that of Scribner himself.

A. The statements of the road before the Board were——

Q. Now, Governor Mickey, I shall insist upon an interruption of you there, because that is no answer to my question at all. I have asked you a plain question. If you had not heretofore testified, when I tried to get you to state the evidence you had before you, that the only evidence you had was the returns of the Union Pacific, and the admitted statement of Mr. Scribner that the value of
1321 the tangible property was the value placed there for insurance.

A. My answer had no reference to the tools as being insured, but I said, all the insurable property that was insured.

Q. Then you say now that it was not an arbitrary increase of the valuation of these tools?

A. I answered that it was an increase, that was in the judgment of the Board an increase that ought to be made.

Q. Was it arbitrary or not?

The GENERAL ATTORNEY: The defendants object to this as calling for a conclusion, and as trifling with the witness.

A. You might call it arbitrary and you might not.

Q. Was it arbitrary or not?

A. Well, it was an increase, which in *in* the judgment of the Board was justified by the statement and evidence before the Board as to how the property had been listed and valued by the road.

Q. That is all the answer you want to make to that question, i*t* it?

A. Yes; I don't care to make any other answer.

Q. Is there any other answer that you want to make to that?

A. No sir; I don't think so.

Q. Have you answered as best you can, to the best of your ability?

A. Why, yes.

Q. If there is anything else you want to answer, please do it now.

A. I don't think of anything.

Q. You are through?

1322 A. Yes sir.

Q. So, it stands admitted by your statements here today that all the evidence you had before you of any kind, or character, to increase the value of these returns, was the return of Mr. Scribner, and his admitted statement before you that he had placed upon the other tangible property a value the same as it was insured for.

A. I think I answered that question.

Q. That is all the answer you want to make to this question?

A. Yes sir.

Q. So that it goes back to the record here as to your prior answers as to whether my interrogatories are correct, or not?

A. That may be your conclusion.

Q. My conclusion about what?

A. The answer to the question.

Q. You have answered it then?

A. Yes sir.

Q. You have increased the rolling stock of the Union Pacific railroad from $3,028,069.00 to $3,785,086.25, or an increase of $7,575,019.25; what evidence, not opinion, but evidence, did you have before you as to the list, amount, character, or value of the rolling stock of the Union Pacific, other than the sworn evidence of Mr. Scribner?

A. Well, I think we had some testimony from Mr. Highleyman of the Missouri Pacific.

Q. As to the Union Pacific?

A. As to the rolling stock.

Q. As to Union Pacific rolling stock?

A. As to rolling stock.

1323 Q. As to Union Pacific rolling stock?

A. Not particularly as to that.

Q. Any evidence as to Union Pacific rolling stock?

A. As especially affecting the decrease in value.

Q. I am not talking about that at all. Had you any other evidence of any kind or character, from any witness or any written statement, as to the list, character, quality or value of the Union Pacific rolling stock?

A. No; I guess not.

Q. No; of course you didn't. Now then you increased it in round numbers $757,000, didn't you?

A. I do not remember the figures there might have been some increase.

Q. You did increase it $757,000.

A. It is possible that is true, but I don't remember the figures, because I haven't looked at them since.

Q. Examine Exhibit 74, and state the valuation you placed upon the rolling stock of the Union Pacific.—(Witness examines paper.)

Q. (continued). Have you found out how much you increased it?

A. According to these figures on this statement, it shows an increase.

Q. You won't answer these questions as to the figures. Of course, that is important, because I can't go on with my interrogatory until you know. You say it possibly may be correct, but we must be absolute; so I say, examine Exhibit 74, and state at what you valued the rolling stock of the Union Pacific railroad company?

A. I presume—I know that the increase was made, and I presume these figures are correct.

Q. Please answer the question.

1324 A. I have answered the question.

Q. Is that the only answer you make?

A. Yes.

Q. Do you understand the question?

A. Yes sir.

Q. What did I ask you?

A. The clerk may read it.

Q. No, you state it.

A. The clerk may read it.

Q. No, you state it.

A. The clerk may read it, and there will be no dispute about it.

Q. Is that the only answer you make to that question?

(No answer.)

Q. Governor Mickey, please examine Exhibit 74,—(handing the Exhibit to the witness)—and state what you valued the rolling stock of the Union Pacific at.

A. The question has been answered.

Q. Governor Mickey, do you swear that you have answered that question?

A. I do.

Q. You do. You swear that you have answered my question?

A. Yes sir.

Q. Governor Mickey, please examine Exhibit 74, (handing the Exhibit to the witness) which has been filed in this case as evidence.

A. I have.

Q. And state what you valued the rolling stock of the Union Pacific railroad at, as appears from that statement.

1325 A. I have answered that question.

Q. What was the valuation?

A. As stated in the answer.
Q. What answer?
A. Just previous.
Q. Why do you swear that you gave me the figures of the valuation of the rolling stock of the Union Pacific?
A. I do.
Q. Haven't you just sworn that you couldn't?
A. No sir.
Q. Haven't you just sworn that you didn't know them, not more than 2 minutes ago?
A. I think not.
Q. You think not. Well, if you did swear as to what it was two minutes ago, please state it again.
A. Well, now, my judgment would be that it would be an impossibility for any man to remember those figures for the length of time that has elapsed, and I have admitted, or said, that the figures there I presumed were correct.
Q. There isn't any question that you cannot remember therefore, I have asked you to examine Exhibit 74, where they are, and state them to me, and you have sworn that you did.
A. Yes.
Q. Of course, I have to differ with you. You did not swear to anything of the kind. You swore that you couldn't tell; so then to be accurate, I passed you this Exhibit 74, and asked you to take that and tell what you valued the rolling stock of the Union Pacific at.
1326 A. I have answered the question.
Q. Governor Mickey, you have heretofore sworn that Exhibit 74 contains the valuation fixed by the Board of all the tangible property of the Union Pacific. I now ask you to take that Exhibit and state what was the amount of the valuation of the rolling stock of the Union Pacific. This is for the purpose of predicating further questions as to the method of arriving at figures for the valuation of the stock.
A. My recollection is that I swore that that was an estimate of the tangible value.
Q. All right, state what your estimate was according to that statement.
A. The figures are shown on that Exhibit 74.
Q. Will you please examine it and state them?
A. I have examined it.
Q. Please state them.
A. Do you want me to read it?
Q. Yes; that is just exactly what I want you to do. I want you to give the figures. That is what I have been trying to get you to do.
A. I beg your pardon for assisting you in arriving at the point in the question. This is headed "Exhibit 74, C. W. P.," Lands——
Q. No; I am asking for the rolling stock only; not the lands.——
A. Lands is opposite, and the letter "S," Main Line, 4,432,505.40; bridges——
Q. No, not bridges——
A. As you return it, 1,198,097.00——

Q. I don't want the bridges or the lands, I want the rolling stock——

1327 A. Buildings, 25 per cent. added to your return of 818,222. dollars——

Q. Governor Mickey, I don't want anything but the rolling stock——

A. —$1,022,777.60——

Judge BALDWIN: The counsel now moves to strike this all out as not responsive, and counsel objects to the obduracy of the witness in refusing to answer the question as asked——

A. —Main track——

Judge BALDWIN: And counsel for complainant protests against the witness making these statements which are not called for at all——

A. —Main track, 467 thousand——

Judge BALDWIN: Counsel again protests against the witness answering the question in this manner——

A. —560 dollars——

Judge BALDWIN: Counsel for complainant has protested repeatedly against the witness reading any portion of this document except what was called for by the question and desires that the record shall show that he has repeatedly told the witness that he has asked him to state from that Exhibit what he returned as the value of the rolling stock of the Union Pacific, and that the witness has repeatedly read other items, and counsel now objects to the conduct of the witness as highly improper.

1328 Q. Now, inasmuch as we have progressed some time, Governor Mickey, Please state from your examination of Exhibit 74 what you estimated, as you say, the value of the rolling stock of the Union Pacific railroad?

A. I understood you that you wanted me to read this Exhibit 74.

Q. I never asked for it, and I never understood that you was to read any other item except the one that I asked about, which was the rolling stock, and you know that, because I repeatedly told you, after your reading of the lands and bridges, and I stopped you at everyone and called your attention to the fact that I did not ask you for that, but you persisted in reading them.

A. (Reading from Exhibit:) 86.08% of whole, plus 25%, $2,606,562, equals $3,258,202.50.

Q. The first item now, $2,606,562.00 is what it was returned at?

A. I presume by referring to your returns—to those returns. I don't carry the figures in my mind.

Q. That is perfectly ridiculous. I am not asking you to do that. I am saying that is the value it was returned at.

A. By looking at that, I could verify it.

Q. That is just exactly what I want you to do. Examine Exhibit 68–C, which is the sworn statement of Mr. Scribner as to the value of the rolling stock.

A. This is under the head of Main Line; says rolling stock as per schedule No. 5, $2,606,562.

Q. So then, we now go back to Exhibit 74, and it shows that those figures that you read were the figures of the valuation as returned by the Union Pacific?

A. Yes sir.

1329 Q. The other figure, $3,258,202.50 was what you determined or estimated the value of the Union Pacific rolling stock, by the Board, on the main line?

A. I should answer that in my judgment those were the figures of what was the estimated value of the road on that class of property.

Q. I am not asking you that. It is not a question of judgment. It is a question of fact, absolute concrete fact.

A. Well, I should answer that was the conclusion of the board on the estimated value of the rolling stock.

Q. Not the conclusion at all. I want to first get the figures, so I have got these records.

A. Well, I am speaking of these figures here.

Q. I am not asking for any conclusion here. I say it appears from the returns which you read of the Union Pacific ,of its value of its rolling stock, to be $2,606,562. Now, look again and get those figures correct.

A. I have looked at them.

Q. Are they correct?

A. It is my recollection; my recollection is that in the value of that kind of stock, the Board considered the report of that stock.

Judge BALDWIN: I protest, and I ask the Attorney General, the representative of the State in this matter to admonish the witness to properly answer the questions, and I desire to take his action on the record.

A. The valuation of Mr. Scribner——

1330 Q. Governor Mickey, I ask you to turn to Exhibit 68—*c*, which you read, and I ask you if those are not the figures that the company returned as the valuation of its rolling stock?

A. Will you let me explain.

The ATTORNEY GENERAL: I object to this for the reason that he has already answered that they were.

Judge BALDWIN: We will make the record to show that counsel for complainant now asks this question, which has not been answered:

Q. Governor Mickey, examine Exhibit 68-*c* again, for the purpose of refreshing your recollection, if necessary, and state whether or not the figures that you read, $2,606,552, are not the figures, or are the figures, returned by the company as the value of its rolling stock on the main line?

A. I answer that as I did before, yes.

Q. Please examine Exhibit 74, finding there what you call the estimated value made by the board of the rolling stock of the Union Pacific on the main line?

A. I have.

Q. What are those figures?

A. 86.08 per cent. of whole, plus 25 per cent., $2,606,562; equals $3,258,202.50.

Q. Now, Governor Mickey, examine Exhibit 68-c, under the head "O. & R. V. Branch" and state for the purposes of refreshing your recollection the value of the rolling stock returned by the Union Pacific on the O & R V branch. Here is the Exhibit, (handing the Exhibit to the witness)

A. I find Rolling Stock, as per Schedule No. 5, $398,494.00.

1331 Q. Now, please take Exhibit 74 and state what you call the Board's estimated value of the stock on the O & R V Branch?

A. Rolling Stock, plus 25 per cent. of $398,494.00, equals $498,117.50.

Q. Please examine Exhibit 68-c on the K & B H branch, and state for the purpose of refreshing your recollection the value of the rolling stock on that branch returned by the company.

A. Rolling Stock as per Schedule No. 7—no, I guess Schedule No. 5—$23,013.00.

Q. Please, now, examine Exhibit 74, and state what the Board estimated, as you so denominate it, the value of the rolling stock of the Kearney & Black Hills Branch?

A. Rolling Stock, 76 per cent., plus 25 per cent. of $23,013. equals $28,766.25.

Q. Now, Governor Mickey, adding this up, we have as the value of the rolling stock returned by the company under the affidavit of Mr. Scribner to be $3,028,069.00, according to Exhibit B, estimated as you so denominate it, at $3,785,086.25; now those figures are correct, are they?

A. I haven't added them, but I presume they are.

Q. Then for the purposes of the next question——

A. If this is simply the total, correctly added, of these other amounts, it is correct.

Q. It makes a difference of $757,017.25; Now, if those figures are correct, you increased the value of the rolling stock of the Union Pacific $757,017.25, on the evidence as heretofore enumerated by you in answer to my interrogatories?

A. Yes sir.

1332 Q. Now, Governor Mickey, what did the Board, when it made the assessment of the railroad properties, estimate what the grand assessment roll would be of the state, including the railroads as well as all other kinds of property?

A. They never made any estimate.

Q. Never did.

A. No sir.

Q. Never talked about it?

A. There had been some discussion during the legislature about it.

Q. Didn't you talk about it?

A. I had a discussion with different ones about it.

Q. Then it was discussed?

A. Just spoken of, yes.

Q. Just merely spoken of?

A. I should answer yes; the question was what effect the new revenue law would have.

Q. That is general; but for the purposes of making this assessment didn't you estimate that the grand assessment roll would show a valuation of four hundred million dollars?

A. No sir.

Q. Didn't you believe it—you, yourself—when you made up your judgment?

A. I think I made this statement, and it is my belief now that the valuation of all the property would aggregate that amount.

Q Yes sir Didn't you believe before you made that assessment and when you made the assessment that the grand assessment roll would be $400,000,000.00?

A. No sir.

Q. Didn't you so state it?

1333 A. No sir.

Q. Didn't you so state it to Mr. Kelly?

A. No sir.

Q. In your judgment, and didn't you say that if it didn't that you would see that it was increased?

A. No sir.

Q. You and Mr. Follmer?

A. No sir; we did not, we had that conversation in the Millard Hotel, in which——

Q. You have denied it, and that is all there is to it.

A. We came down at the invitation of Mr. Kelly to consult over the assessment.

Q. But you deny making that statement?

A. Yes sir.

Q. Governor Mickey, did you have any conception or estimate or belief as to the value of the property on the grand assessment roll before you made that assessment?

A. We had none.

Q. And you didn't take — into consideration, did you?

A. No sir.

Q. Just as Secretary—Treasurer Mortensen testified yesterday, you didn't consider it at all, did you?

A. No sir.

Q. You didn't consider the value of any other property other than the railroads did you?

A. No sir.

Q. You didn't consider the value of lands?

A. No sir.

Q. Nor of merchandise?

1334 A. No sir.

Q. Nor of stock?

A. No sir.

Q. Nor of cattle?

A. No sir.

Q. Nor of household goods?
A. No sir.
Q. Nor implements?
A. No sir.
Q. You never made any investigation as to them, did you?
A. No sir; we did not, because the law did not require us to.
Q. Oh, we will see whether the law did or not.
A. That is to be settled by the Court.
Q. I want to get the facts; when you made the assessment of the railroad property of the state of Nebraska in 1904, you solemnly swear that you made no investigation as to the value of lands, stocks of merchandise, monies, credits, implements, or household goods, did you?
A. No sir; that was in the hands of the assessors.
Q. Yes, in the hands of the assessors?
A. Yes sir.
Q. You made no investigations?
A. No sir.
Q. Neither prior to that time nor at the time?
A. No sir.
Q. So then, that is true, is it?
A. Absolutely.
Q. Then you solemnly swear to it?
A. Yes sir.
1335 Q. Then did you consider the question of uniformity at all?
A. No sir; all we did was to assess the railroads.
Q. And you didn't take into consideration the question of uniformity at all?
A. We assessed the railroads in accordance with the statutes as provided for the assessment of the railroads.
Q. I want to know the facts; you never considered the question of uniformity at all?
A. I answered it; no sir.
Q. And you so swear?
A. Yes sir.
Q. Now, Governor Mickey, the buildings of the Union Pacific were returned at $818,222.00 on the main line, (turning to the Attorney General). That is correct, is it not, Mr. Attorney General?
The ATTORNEY GENERAL: Yes sir.
Q. The buildings according to Exhibit 74 were estimated, as you denominate it at $1,022,777.50, making an increase of $204,554.50, on the buildings of the main line. Please state what evidence you had before you as to the list, character and description of this property, other than is shown by the sworn return of Mr. Scribner?
A. There are several questions there in one. I don't know whether I can answer it so as to be understood or not. My recollection is that 25 per cent. was added to the value placed by Mr. Scribner, for the reason that the valuation placed by him was the insurance value, and was about 75 per cent. of its proper value.

Q. Mr. Scribner made that statement that it was 75 per cent. of its true value?

1336 A. He said it was the insurance value placed—that was about 75 per cent. of its true value.

Q. His return established it to be the actual value, didn't it? Now, you say, notwithstanding he had sworn to you it was his actual value, that he stated to you under oath again, that it was not its actual value, but its insurance value?

A. The explanation of the valuation he returned was that it was the insurance value carried on the property.

Q. That is all the evidence you had to make this increase?

A. Yes.

Q. Now, the difference between the returned value, and the value fixed by the Board of the Omaha and Republican Valley branches is the difference between $159,090, and $127,272.00, or a difference of $21,818.00, that is the increase made upon the O. & R. V. branches, and you made that for the same reasons that you did on the main line?

A. Yes sir; the same statement was made by Mr. Scribner.

Q. The K & B H Branch was assessed at $16,393.75, valued by the Board; returned at $13,115.00. Those are the buildings I am talking about, or a difference of $3,278.75, and that was increased by the Board for the same reason that you stated for the main line?

A. Yes.

Q. So, Governor Mickey, the buildings of the Union Pacific were returned under the sworn testimony of Mr. Scribner at $595,609., and you estimated their value at $1,198,261.25, or an increase of $239,652.25, and you made that increase on the valuation on the sworn testimony of Mr. Scribner alone?

1337 A. I want to answer that question by saying that in the investigation of this property we called Mr. Scribner, with other agents of roads that were under consideration, and questioned them as to how they arrived at the value of the property, and in relation to the buildings, they said they were listed at what they were insured for, and the Board regarded that that insurance was less than the real value, and therefore needed an increase.

Q. Now, that is all the evidence you had?

A. Yes.

Q. Governor Mickey, you assessed the property of the Pullman Palace Car Company, the Board did?

A. Yes sir.

Q. Did you assess its franchise?

A. My recollection is that the Board did not.

Q. Why didn't you?

A. They never had any action—or right given them, as we understood that railroads had, and therefore, had no franchise.

Q. The Pullman Palace Car Company have a franchise?

The Attorney General: The defendants object to this as being immaterial and argumentative.

A. Well, we discussed that question as to whether they had or had not.

Q. Well, it operates cars in this state, doesn't it?
A. Well, I am not able to answer that question.
Q. Did you ever ride in a Pullman?
A. I have.
Q. Did you ever pay fare?
A. Yes sir.
Q. Then you know it operates cars in this state and col-
1338 lects tolls.
A. Well, not all the time I don't ride in Pullmans.
Q. Well, I don't mean anything personal, but you do know yourself that it operates cars in this state, and that it collects tolls?
A. Yes sir.
Q. Now, isn't that a franchise?
A. Well, I don't know that I could say definitely whether it is or not.
Q. Well, that's all. But you did assess the franchise of the Union Pacific?
A. Emphatically.
Q. And you did not assess the franchise, if such a thing exists by virtue of the right to operate cars and collect tolls is a franchise—of the Pullman Palace Car Company?
A. I should answer no, because the statute don't require any franchise assessment of the Pullman Palace Car Company, but it did require it for the railroads.
Q. Did the statute prohibit you from assessing the franchise of the Pullman Car Company?

The Attorney General: The defendants object to that as calling for a conclusion.

A. No sir.
Q. But you said you took into consideration the franchise of the Union Pacific in order to ascertain its value, didn't you?
A. Why, emphatically, yes sir.
Q. Now, you wanted to get the true value of the Pullman Palace Car Company, didn't you?
A. Yes sir, certainly.
Q. You wanted to be just as honest in that as when you were assessing the Union Pacific?
1339 A. Yes sir.
Q. It had a franchise?
A. I don't know whether it had or not.
Q. It had a franchise according to your definition; they had a right to do business in this state and collect tolls?
A. I will answer that, that that is very similar, but the statute does not provide that they have any franchise, and they operate without being granted a privilege by statute.
Q. As affecting your competency, and honest judgment, in the formation, sir, of your valuation of the railroads of the state of Nebraska, I ask you this question: When sitting as a member of that Board, you had a knowledge, did you not, that the Pullman

Palace Car Company operated cars on different roads in the state or Nebraska, and collected tolls therefrom?

A. Emphatically.

Q. Now, in ascertaining the value of the Pullman Palace Car Company, you didn't take into consideration that right, whatever it may be?

A. We followed the strict letter of the statute, and their sworn return was not made as in the railroad case, and we assessed their property in accordance with the law directing the course.

Q. You are giving your reasons why you didn't do it, now; but I am asking for the ultimate, concrete, fact; that is that when you came to find the value of the Pullman Palace Car Company you did not take into consideration its right to do business in this state, did you?

A. We did not take into consideration any franchise value.

Q. Whatever that may be?

A. No sir.

1340 Q. Therefore, for——

A. Now, wait until I finish the answer—But we made the assessment as the statute provided as to the number of miles that the cars of the Pullman Palace Car Company would travel.

Q. But, what was the fact, that you didn't do it because you state that the statute didn't require it; that is correct, isn't it?

A. I don't know as I quite understand you.

Q. Now, then, if it should be hereafter determined and held by this court that the right of the Pullman Palace Car Company to do business in this state, and to operate its cars and to collect tolls, should forsooth be a franchise, you did not take into consideration that right, whatever it may be, when you determined the value, did you?

A. You are predicating your question upon something that may not occur; and I can't answer all those questions.

Q. Why, Governor, you don't mean to swear that you don't understand that question here, as Governor of the State of Nebraska?

A. I understand your language, yes sir.

Q. Do you understand that question or not, sir?

A. Why yes. I understand the question.

Q. Then, if you do undestand it, you don't have to determine the question of law at all—I have eliminated that from your consideration—I am asking you now, and I want your answer, as Governor of the State of Nebraska——

A. I well have the question read again.

Q. I will ask this question again.

A. Well, let's have it read now—the question he has got.

Q. All right; read the question he has.

1341 Question read:

"Q. Now, then, if it should be hereafter determined and held by this court that the right of the Pullman Palace Car Company to do business in this state, and to operate its cars, and to collect tolls, should forsooth be a franchise, you did not take into considera-

tion that right, whatever it may be, when you determined, the value, did you?"

A. The Board did not consider that possibility or probability.

Q. Well, Governor Mickey, you did not consider that "Probability" I ask you, did you consider that fact?

A. I should say no.

Q. Well, is that as definite as you could be, "I should say no," did you or not take that fact into consideration in making this assessment?

A. You mean to refer in your question there to the possibility of the Court——

Q. You have answered the question that the Board did not take into consideration that "probability." I don't know what you mean, and so as to be clear, I ask you, did the Board take into consideration that absolute concrete fact that it was collecting tolls in this state and operating cars?

A. Yes sir.

Q. You took that into consideration in determining the value?

A. Yes sir.

Q. You then assessed the franchise?

A. That is, we discussed that point—that fact—that they were charging tolls for carrying people across the state of Nebraska..

Q. Then you did fix the value and take into consideration
1342 the franchise of the Pullman Palace Car Company?

A. No; I say we discussed that fact; we knew they did that.

Q. You knew that? That is the fact I am trying to establish by my questions, that they were doing so, and if forsooth it should be determined a franchise, did you assess then that franchise of the Pullman Palace Car Company?

A. No, I told you we assessed them according to the statute, which provided that they should return the mileage of the travel of each car, and we followed the statute.

Q. Well, then, you did not assess the franchise of the Pullman Palace Car Company?

A. Why, no; I told you that a good while ago.

Q. There are other private car companies in the state of Nebraska, aren't there?

A. Yes sir.

Q. Armour & Company?

A. Yes sir.

Q. And Swift?

A. Yes sir.

Q. And Hammond?

A. Yes sir.

Q. And Schwarzchild and Sulzberger—you didn't assess them?

A. No sir.

Q. You didn't assess them on their franchise?

A. We assessed *them* for the use of the cars, as the statute provided.

Q. You didn't assess their franchise?

A. We followed the letter of the statute, and I don't think the statute provided for that.

1343 Q. We are going to claim that that is, of course, unconstitutional, so I want to get the fact that you did not; if they are doing business in this state, and charging extra service for the use of a private car, and collecting what we call a toll from it, and if it should hereafter be determined to be a franchise, I now ask you if you did assess that franchise when you were ascertaining the value of the private cars used in this state?

A. Why no, because the statute did not require the assessment of any franchise.

Q. Well of course the last part of the answer is superfluous, I just simply want the fact. In arriving at the value of the Pullman Car Company property, or rights, whatever they may be in this state, did you take into consideration its earnings gross and net?

A. You mean of the whole system?

Q. And in the state.

A. The Pullman Palace Car company?

Q. Yes.

A. I don't think there was any return made.

Q. Did you seek the information from Poor's Manual as to what its gross and net earnings were?

A. My recollection is that we relied upon the statute as provided for their returns, and they made their returns in accordance with that statute, and that we assessed them on that basis as provided.

Q. Did you, in arriving at its value, at the valuation, take into consideration its earnings net and gross?

A. No sir I should say not because the statute does not

1344 require it.

Q. I am not criticizing whether you did right or not, I want to get the fact, Governor Mickey, for the determination of the correctness of this assessment. As a fact did you take into consideration, in assessing the value of the Pullman Palace Car Company, its net earnings?

A. I should answer according to my recollection that we did not because the statute did not require that.

Q. Did you capitalize its earnings or attempt to ascertain the value on that theory?

A. No sir I think not.

Q. Did you take its stocks and bonds and attempt to find its value upon that theory?

A. I think not.

Q. Did you take into consideration the net earnings of any other private car company?

A. I think not.

Q. Did you capitalize the earnings of any other private car company for the purpose of ascertaining its value?

A. No sir.

Q. Did you take into consideration the stock and bond issue of any other private car company for the purpose of determining its value?

A. We did not, we followed the statute which prescribed how the assessment was to be made.

Q. State, Governor Mickey, whether in your judgment, when you were acting as an assessor of railroad property, the valuation of the Union Pacific Property was uniform with the valuation of the Pullman Palace Car Company, and other private car companies
1345 in this state?

The ATTORNEY GENERAL: The defendants object to that as calling for a conclusion, this being a question for the Court to decide, and for the further reason that it is immaterial and incompetent.

A. I think I ought to answer that question that that was not considered by the Board.

Q. I repeat my question, perhaps in a different form. In the exercise of your duty as assessor of railroad property did you make any investigations as to whether or not the valuation you placed upon the Pullman Palace Car Company, and other private car companies, of their property, was uniform with the valuation you placed upon the railroad property?

A. I would answer the question as above.

Q. There is more in this question. I ask you if you made any effort or investigation?

A. I will answer the question as above, that the Board did not take into consideration that matter.

Q. Did you as a member of that Board exercising the important duty of assessing these large properties make any investigation, call for any testimony or information, as to whether the valuation placed upon railroad property was uniform with that that you placed upon private car companies or corporations exercising the right in this state to do business and collect tolls as public corporations?

A. That is a very long question. Now then I want to say this that there was nothing done by the Board in that matter until the time of the equalization in July when we met, and at that time
1346 there was no discussion as to the comparative values as between the railroads and the Pullman Company because the Board considered the assessment had been made and couldn't be changed.

Q. So you made no investigations did you?

A. Well now I would answer that at the time of the equalization we made investigation as to certain properties, but not as between the Pullman Company and the railroads.

Q. I am talking of the time you assessed?

A. Well I answer that we did not, the Board did not. I think that is the way I answered it in the first place.

Q. You know Ross L. Hammond of Fremont, Nebraska?

A. I do.

Q. Did you have a conversation with him at or before the Republican Convention, with reference to the assessment of railroads?

A. No sir.

Q. None whatever?

A. No sir.

Q. Positive about that?

A. Yes.

Q. At any time before the convention met did you have a conversation with him with reference to the assessment of railroads?

A. Mr. Hammond asked me the day the convention met what the probable assessment of the railroads might be?

Q. And what did you tell him?

A. Well I said the Board hadn't determined yet, but that in my judgment it would be—as far as we had gone into it, it would indicate that it would be about $45,000,000.00.

1347 Q. That was the morning of the convention?

A. The day of the convention.

Q. Well it was before the convention was held, wasn't it?

A. Yes sir.

Q. And you stated to Mr. Hammond, in answer to his inquiry, that you thought, while it had not yet been definitely determined, that you thought it would be in the neighborhood of $45,000,000.00?

A. I said to him that the work of the Board had not been completed; the information we desired to ascertain the value of the stocks and bonds had not been received yet, but so far as we had gone into it it indicated that it would be about $45,000,000.00, yes.

Q. Did Mr. Hammond state to you why he made that inquiry?

A. No sir he did not.

Q. Did you know?

A. No sir.

Q. Did you suspect?

A. Well I had an idea that perhaps he might be anxious to know what the Board was going to do, the same as the railroads were.

Q. And so you told him just before the convention didn't you?

A. I answered his inquiry, as I told you.

Q. Didn't you know that the Omaha Bee, the World-Herald, the Lincoln Evening News and the Fremont Tribune were demanding that the assessment of the railroads be increased to fifty or sixty millions?

A. Well there was a whole lot in the papers.

Q. And you read the papers?

A. Well some of them but not all of them.

Q. Well there wasn't an issue morning, noon, or night of any of those papers that was not pounding this Board to increase the

1348 assessment of these railroads was there?

A. I think the Board was pounded on that side and from the side of the railroads. We were between two fires.

Q. No doubt about being between two fires, but it is a fact that the Omaha Bee, the World-Herald, the Lincoln Evening News and the Fremont Tribune were demanding that you increase this railroad taxation from 50 to 60 millions or it might endanger the success of the party, isn't that so?

A. I think they were demanding a great deal in editorials of that character, yes sir.

Q. And now then the morning before the convention you told

Mr. Ross L. Hammond that it was not definitely determined but that it would be in the neighborhood of $45,000,000.00?

A. I said in my judgment.

Q. Certainly in your judgment?

A. Yes, yes.

Q. And at that time, it was May 18, 1904, and the assessment was never made until June 16th, was it?

A. I don't remember the date. It was made long after that.

Q. The first time the public knew of your assessment was June 16, 1904?

A. Well, I would have to verify the date by the record.

actly.

A. The public didn't get the information until the Board le-

Q. Well about that time. You don't have to remember that extermined what it should be.

Q. That was a month after this conversation that you had with Ross L. Hammond?

A. In that neighborhood, yes sir.

Q. You were renominated for Governor in that conven-

1349 tion?

A. Yes sir.

Q. That day?

Q. Yes sir.

Q. During this assessment by the Board did you have any conversation with Mr. Bennett relative to what the Bee said with reference to the assessment?

A. I don't recall any, yet we may have had, because he was secretary of the Board and the Bee was there and it was read perhaps.

Q. As to what Rosewater said would be the result if you did increase the railroads to 50 or 60 millions?

A. No sir, I do not recall anything of that kind.

Q. No conversation with Mr. Bennett of that kind?

A. I do not recall anything of that kind.

Q. You do not recall it?

A. No sir.

Q. Now Governor Mickey is it not a fact that under a law which required you to fix the assessable value of the Union Pacific at full value, did you not, acting in conjunction with the other members of the Board, vote for and fix that valuation at $6,323,332.00 in 1903 and in 1904, under a law which required you to fix the assessable value at 1/5 of that amount, or 1/5 of the fair, cash value, vote for, and acting with the other members of the Board, fix the 1/5 value at $10,575,609.80?

A. I think I testified yesterday as to the fixing of the value in 1903 and that it was fixed at 6 million, I do not know the figures just exactly.

Q. In round numbers?

A. Round numbers, yes.

1350 Q. As its actual value?

A. No that was not actual value?

Q. That was what the law required you to do?

A. That was the old law, yes sir.

Q. That is what you were sworn to do?

A. Yes sir.

Q. And you were sworn to fix the value at the actual value in 1903?

A. Yes sir we are sworn to enforce the law.

Q. But you fixed the actual value of that property at $6,323,-332.00?

A. Yes sir.

Q. And one year after you fix the 1/5 value of it at $10,575,-609.80?

A. Under the first assessment in 1903 we followed precedent, the precedent followed for years in the assessment by the different boards. In the assessment of 1904 we aimed to follow the strict letter of the statute, the new statute, which was different from the old law.

Q. It was not different Governor Mickey, so far as your oath of office was concerned, in 1903 and 1904 for the ascertaining of the actual value of the property.

The ATTORNEY GENERAL: The defendants object to this for the reason that it is calling for a conclusion of law and for the further reason that it is incompetent, and immaterial.

A. My recollection is that the Union Pacific and the other roads said that the assessment in 1903 was fair compared with the assessment of other property.

Q. Never said that in the world—but pass that, that is objectionable.

1351 A. I know we talked with your tax commissioners, they were down there.

Q. Well that is an observation that I should not indulge in. So that under your oath of office, as assessor of these great properties, you found in 1903, the full actual value at $6,323,332, and a year after, under an assessment of only one fifth you found it at $10,575,-609.80, or an increase of $4,000,000 for one fifth of what a year before was the actual value?

A. Do you ask that as a question?

Q. Yes sir.

A. Yes sir, in following the actions of our predecessors, and I suppose that was a violation of the law. I followed the action of my predecessors and I suppose I was a violator of the law the same as everybody under that old law.

Q. So you did violate the law in one or two of these cases?

A. I suppose we did, yes sir.

Q. Now then Governor Mickey will you tell me what evidence you had before you in 1904 that showed any practical increase either in quantity or value of the Union Pacific railroad over 1903?

A. Well we had their sworn returns under the new law, which gave us information.

Q. Yes sir, yes sir.

A. On which we could act.

Q. But was there a thing that could amount to——

A. Which was different from the former law——

Q. Will you tell me which return it was that showed any practical increase in quantity of the tangible property of the Union Pacific?

A. I do not remember the net earnings, and I do not re-
1352 member the stock and bonds, the amount of the stock and bonds.

Q. Of course I am not asking you that, but can you state whether there was any practical increase over 1903?

A. But the Board simply assessed the railroads in 1903 in comparison fairly with other property, aimed to——

Q. You have told us that two or three times——

A. Wait until I get through—under the new law in 1904, which undertook to revise our revenue system, and which at one time I had a talk about with Mr. Kelly of the Union Pacific, about the matter, and he said he was for it, and was for a revision of our revenue system and when it was done they would stand their share, and the Board felt it was their duty to enforce the law at that time in the assessment of 1904, the strict letter of the law, and started out to carry it out fairly as to the corporations and everybody.

Q. Now after this dissertation on the unction of duty in office I will ask you for the facts.

A. Yes.

Q. I ask you what practical, visible increase was there in the tangible property of the Union Pacific in 1904 over 1903. I mean did they have many more cars, engines, depots, tools and materials than they had in 1903?

A. I think there was some increase.

Q. Very slight wasn't it?

A. It amounted to quite a bit in net earnings I think. I haven't them before me, but there was some increase.

Q. The net earnings in 1903, Governor Mickey, that is the net earnings as returned to the State Board, as it showed includ-
1353 ing this interstate business, in 1903, was $5,482.37 per mile, and in 1904 it was $5,566.82, an increase of only $84.45 a mile, and that is all the increase there was in the earnings. Now then can you recall in a general way that there was any particular increase of the number of cars, engines, buildings or stations over 1903?

A. They did not consider that.

Q. You did not consider that?

A. No sir we followed the new law.

Q. I am asking you as a fact, did it appear before you, did you take that into consideration that there was not much increase?

A. Well the Board was five instead of three—there were two new members on the Board, and the 1904 assessment had nothing to do with the 1903 assessment.

Q. Well now you must answer as to these facts, I have called your attention to the fact that the earnings were only increased $84.00 a mile over 1903. Now then was there any substantial increase in

the quantity of the tangible property of 1904 over 1903—don't you know as a matter of fact that there was not?

A. I have testified that I did not know what it was, but my recollection was that there was a slight increase.

Q. Well, I will admit that there was a slight increase, but very slight.

A. And I testified that that had nothing to do with the assessment of 1904—that is that the assessment of 1903 had nothing to do with the assessment of 1904.

Q. That is to say you have testified, as I understand it, directly here, that the fact that there was practically but slight increase in net earnings in 1904 over 1903, and but a slight increase in
1354 the extent and volume of their tangible property, made no difference with this board; haven't you so testified?

A. I answered that the assessment of 1904 was made without reference or consideration of the assessment of 1903, but in accordance with the new law passed.

Q. Governor Mickey you have testified that the assessment of the railroad property in 1903 was done in accordance with precedents, and that you considered that as all other property in 1903, although required by law to be assessed at its actual value was only assessed at from ¼ to 1/20——

A. ¼ to 1/15——

Q. ¼ to 1/15—you applied that rule of law to the railroads didn't you for the reason that you had such a low assessment in 1903, as compared with 1904?

A. I have answered that, yes.

Q. That is the testimony?

A. Yes sir.

Q. But when you came to the assessment of 1904 you paid no attention whatever to uniformity?

A. I never said that.

Q. I am content with that statement.

A. I might add that we followed the new statute in the assessment of railroads.

Judge BALDWIN: It may be noted for convenience, that Governor adds to every answer along this line of questioning these words "We followed the new statute in "the assessment of railroads."

1355 Cross-examination.

(By Attorney General BROWN:)

Q. Governor, yesterday you defined the visible property as the intangible property of a railroad company. Do you wish to be so understood?

A. No I miss-spoke. Tangible property refers to the visible property and not the invisible.

Q. Governor, about how many days, if you remember, was your board deliberating on the question of railroad assessments in 1904?

A. Well, at least six weeks, not all of the time continuously, but most of that time.

Q. During these deliberations who were present for the corporations, you need not name them, but what officers, what representatives, if any?

A. Well of the Union Pacific Mr. Scribner was often present. During that time—not during the sessions Mr. Kelly was present, and I had a conversation with him.

Q. The other railroads were represented?

A. Other railroads. Whenever they asked to be represented, the Board granted them the privilege, and they were frequently there.

Q. During the times they were there, were their returns to the Board under discussion and argument?

A. Yes sir.

Q. Gone over thoroughly, both as to the physical property as shown by the schedules, and the value of their stocks and bonds, and their net earnings?

A. Yes.

1356 Q. All those things were discussed and considered, were they not?

A. Yes sir; very thoroughly.

Q. Now, the Weston resolution provided that you should first, as a preliminary step, take up the returns with respect to the values of the physical property. Is that true?

A. Yes sir.

Q. For what purpose did you do that? Why did you do that?

A. The Board felt that the statute required investigation by the Board of its physical property.

Q. After that investigation, the Board arrived at the estimate which is shown on Exhibit 74, did it not, Governor?

A. I think so.

Q. That estimate never was a final conclusion of the Board, with respect to the value of the Union Pacific, was it?

A. Not at all; never was considered as such. It was understood that it was not, and was not made a matter of record.

Q. Was there ever any vote taken on that estimate, or was it simply an estimate discussed by the Board?

A. No vote, simply a resolution—the finding under that resolution, the result of that resolution.

Q. After you got through considering that phase of the question, then did you undertake to find the value of the railroad according to the stock and bond issue?

A. We did.

Q. Was that investigation made for the purpose of finding the franchise value, or for the purpose of finding the entire value of the railroad?

A. Well, I regard it as a very correct estimate of the entire value of the property. The Board did not decide as to that; yet

1357 it was discussed before the Board, but no action was taken on that.

Q. Was there any attempt on the part of the Board to separate the franchise value from the tangible value?

A. None whatever; we understood that we couldn't do it.

Q. I understand you to say in answer to Mr. Baldwin that in making the stock and bond test you considered these reports that are in evidence made by the company.

A. Yes sir.

Q. Now you reached the conclusion that according to the stock and bond test the road was worth about $90,000 a mile, on an average.

A. Well, a little over $90,000; I don't remember the exact figures.

Q. And then you deducted, as you remember it, the list of securities and stock and land and water assets, as claimed by the agents of the Company?

A. Yes sir.

Q. And left the value of the road, on an average of $65,000 per mile?

A. That is my recollection.

Q. According to that test?

A. Yes sir; that is my recollection.

Q. That conclusion was the same as the conclusion with respect to the physical property in Exhibit 74. It was not final or binding?

A. No, no; it was not considered or inteded to be the finding of the Board.

Q. After you got through with the stock and bond test, then what did you do?

1358 A. We took up the net earnings.

Q. What did you do with the net earnings in order to find the value of the road?

A. Well, we had some discussion of what was deducted; that is, the showing of what the real net earnings were, the betterments were discussed, what they would involve.

Q. Betterments—the same as shown in these reports?

A. Yes sir.

Q. Did you have before you when you were considering the net earning test the Exhibit 68-*g* in evidence?

A. Yes.

Q. Did you have before you at the same time and did you consaid Exhibit 68-*h*?

A. Yes.

Q. These exhibits give the net earnings of the Union Pacific in Nebraska at, in round numbers, over fifty five hundred dollars per mile, do they not?

A. Yes sir.

Q. That was the average over every mile in this state?

A. Over branches and all. Their system in this state, we understood it.

Q. At what per cent. did you capitalize these earnings in considering this test, four, five or six per cent.?

A. Well, we discussed five and six and seven and eight per cent. The question of what the bonds bore, if it was only 4 per cent. would increase the net earnings, because the interest on the bonds were fixed charges, and we found it difficult to establish any definite

rule, if I remember right, as to what per cent. it ought to
1359 be capitalized at; and we felt, to be frank with you, I felt personally, that the Union Pacific should have been assessed at about $12,500 a mile on a capitalization of 6 per cent.

Q. I want you, Governor, to please confine yourself to the question; that is, the $12,500 would be one fifth of its actual value?

A. Yes sir, and in comparison with other railroad property, yes.

Q. Now then, what per cent. in considering this net earning test, did the board conclude would be a fair per cent. at which to capitalize the earnings, to ascertain its value, six per cent., wasn't it, Governor?

A. My impression was it was considered that 6 per cent. was a fair valuation, yes.

Q. And capitalized at 6 per cent., the net earnings show the value of the road to be, then, about $90,000, didn't it, per mile?

A. Yes, it would be about that, yes.

Q. Now, then, you didn't value it at that per mile, did you?

A. We did not.

Q. Was that result and conclusion reached by the Board just the same as the conclusion with respect to the stock and bond value and the physical property value; that is, with the understanding that each test was a factor, and not a conclusive test as to the value of the road?

A. Yes, that is true.

Q. In finally fixing the value of the road at $55,000 per mile, speaking in round numbers, did you assess any property outside of the state belonging to this road?

A. No sir.

Q. Did you assess any property of the Union Pacific road in the state which was locally assessed?

1360 A. No sir; that was all deducted.

Q. You had returns from the company, with respect to those amounts?

A. I think so, yes sir.

Q. You accepted those returns to the Board as true, did you not, Governor?

A. Yes sir.

Q. Did you have any bias or prejudice for the Union Pacific when you made this assessment, Governor?

A. None whatever.

Q. Did you have any unfriendly feeling towards any of the railroads when you made up the assessment for that year?

A. None whatever.

Q. Were you influenced in putting the value on the complainant's property by the agitation that has been spoken of, and the newspaper articles that have been referred to?

A. Absolutely none.

Q. What did you base your judgment on, Governor, in fixing the value of the complainant's property that year for assessment?

A. On the statistics filed before the Board, and the information

we obtained as to the value of the stocks and bonds, and the net earnings and the physical property.

Q. Did the conclusion finally reached by you represent your real judgment as to that value?

A. You mean my personal judgment?

Q. Yes.

A. Not altogether; no; that is, I yielded to the judgment of others, somewhat modifying my estimate.

Q. Did the assessment of the Union Pacific at $55,000 a mile represent your judgment of its value?

1361 A. I think it was below its real value.

Q. You think it was actually worth more than that?

A. Yes sir.

Q. Did you agree with any members of the board, or did they agree, among themselves, to your knowledge, upon any figure at which to assess the railroads that year, before the investigation was made of these returns and reports?

A. No.

Q. Did the Board ever agree, or the members among themselves, in advance of the day that the judgment was finally rendered by the board, fixing the railroad value, to raise the railroad values that year in this state for assessment purposes to forty five or forty six million dollars, or any other sum?

A. No sir; the determination was reached the day the record shows. The amount was reached the day that record shows.

Q. Did any member of the Board ever suggest to you, before your consideration and determination of the matter, that for political reasons, or any reasons, the railroad assessment should be raised.

A. You are speaking of the Board?

Q. Yes sir.

A. No sir.

Q. Did you and the Board use the same general test in fixing the value of the other railroads in the state that you have testified that you used for the Union Pacific?

A. We did.

Q. In your judgment, were railroad properties that year assessed uniformly as between them, approximately?

A. I would answer that yes. Of course, that would imply that after the equalization was made that the result was reached.

Q. I am not speaking of uniformity with other property; I am speaking about the assessment between the railroads of the

1362 state—were they uniform?

A. Nearly so; yes. Of course, I testify, you know, as to my personal view of the matter. Of course, the action of the Board, the way, it was, that was true.

Q. But, do I understand you to say you used the same method and the same tests, and when I speak of you I mean the Board, in assessing the property of other railroads that you used in assessing the property of the Union Pacific?

A. Yes.

Q. All railroads outside of the Union Pacific and the Burlington acquiesced in your judgment, didn't they Governor?

A. I so understand it, yes sir; that they paid their taxes.

Q. Now, your assessment of property in 1903, of railroad property, followed the precedent of previous state board?

A. Yes sir. Could I add that the Board took this view; that it would be wrong to enforce the strict letter of the old law then, with the railroads, whereas, probably it wouldn't be by the outside assessors, but that the new law being passed, the next year it could be taken up fairly.

Q. You knew in 1903 that the property in this state had been under-valued for a long time?

A. Oh, yes.

Q. And that it was assessed all the way from—had been up to that time—by custom, from five to fifteen per cent. of its actual value?

A. Well, from one fourth to one fifteenth, perhaps, of the value.

Q. That custom did not maintain, however, in the year 1904?

A. Allow me to make this explanation, however, that the law provided that the Board in its Equalization, in counties could by levy of taxes, remedy that, and they did in a measure do that.

1363 Q. You could adjust by a levy the disparity in valuation in the different counties?

A. Yes, and the board did that.

Q. Now then, the custom of under-valuation did not obtain in 1904, did it?

A. Of under-valuation?

Q. Yes.

A. No; I think I would want to add, after the equalization was made that it did not obtain.

Q. Well, as a general thing, the several taxing officers of the state, so far as you were advised, undertook to assess property in 1904, of all kinds at its actual value, didn't they?

A. Yes sir; and as the instructions of the Board urged them.

Q. Now then, you remember the meeting of the board when you sat as an equalization board, did you not that year?

A. Yes sir.

Q. How long were you in session?

A. Well, about two weeks, may be a little longer than that.

Q. At that time were there complaints made of under-valuations of property in some counties?

A. There were.

Q. Did you have returns before you at that time of all the county assessment of all the counties in the state?

A. Before the conclusion of that assessment we did; on the commencement there were a few lacking.

Q. Did you make investigations and hear evidence and arguments on those several complaints?

A. We did.

Q. Were they filed before the board?

1364 A. We did, and also, the Board had prior to that instructed the land commissioner to ascertain the average sale value in all the counties the year previous, all sales made of forty acres or over.

Q. You had this report before you?

A. We did, and used it constantly.

Q. You then determined these complaints and equalized the valuations did you?

A. Yes, we raised twenty four counties in valuation, because of the lower valuation; then that report showed all the land, but we did not raise them to the full extent in a few cases, because the law compelled us to raise the personal property, the total valuation of the county.

Q. And in those counties where you thought the property had been under assessed, you raised it from 5 to 15 per cent., did you not?

A. I think from 5 to 10; I would have to consult the records, but I think 10 was the highest—now let me change that—I think it was from 2 to 10 per cent., I think there was one county only two per cent.; I am not positive, however, about that two per cent.

Q. Now, after you had made those increases of those 24 counties, you left the valuations as made in the other counties, did you?

A. Yes sir.

Q. Was it the judgment of the board in raising these 24 counties, and lowering valuations in none of the others, that that left other property than railroads in the state assessed approximately at their full value?

A. Yes.

1365 Q. And that was what the Board intended by its findings, was it not; that in its judgment all other property than railroads had been assessed at its actual value that year?

A. It was.

Q. Now, coming back to Exhibit 74, Governor, which gives the estimate of the value of the physical property; in many instances—in some instances, the Board raised the value as returned by the company. Did that raise represent your judgment of what the property was worth fairly?

A. It did.

Q. And it was based on the reports of the Company, and the statements of Mr. Scribner, and on your general knowledge of values?

A. It was.

Q. Governor, did you at any time ever say to Mr. Philpott, a reporter for the Omaha Bee, or Mr. Ditmar, reporter for the Lincoln Evening News, or any other person, that the Board had agreed on the aggregate assessment of all the railroads, and would afterwards distribute the values?

A. No; never.

Redirect examination.

By Judge BALDWIN:

Q. Governor Mickey, you have testified that when you took the capitalization of the earnings value of the tangible property, and stock and bond issue, you did not take any one; you simply used them, as well stated by the attorney general, as factors in the formation of your judgment?

A. Yes sir.

1366 Q. You did not rely on any one theory?

A. I would answer that yes.

Q. You did rely upon some one theory?

A. No; we didn't rely upon that, but we took that under consideration, each one.

Q. How much did you say you arrived at the value of the road according to the capitalization of the net earnings per mile, $62,500, wasn't it?

A. $65,000.

Q. $65,000?

A. I think so, perhaps a little more.

Q. And by the stock and bonds theory, between $90,000 and $95,000 per mile?

A. Yes.

Q. Was the tentative, as you call it, estimated value of the road, according to the capitalization of the earnings theory reduced to writing as was the valuation of the tangible property, as shown by Exhibit 74?

A. I don't understand that.

Q. What you call the estimate of the tangible property was reduced to writing, and is found in Exhibit 74?

A. The tentative value, or the value in our judgment, fixed of the tangible property was made of record, and on paper by pencil, I presume, and this is perhaps a copy.

Q. Was anything done of that kind with the theory of the capitalization of the earnings?

A. Yes; papers were made.

Q. Where is it?

A. I presume it may be in existence with the Secretary.

1367 Q. Was there any motion made in the record of it?

A. No; it was put on paper to get the facts which we had to assist in the valuation.

Q. Was any record reduced to writing, of the value according to the stock and bonds test—was it reduced to writing according to motion and filed, like Exhibit 74?

A. My judgment and recollection is that these figures, as were in relation to the stock and bonds and net earnings, were in pencil, and upon paper, and were considered in the final conclusion in which we arrived at the value of the property.

Q. They were filed like this, and the subject of a motion like this, of the tangible property?

A. No; there was facts ascertained, and made in pencil upon paper by the Board in session, to be considered when we came to make the assessment.

Q. But not like that of the tangible property?

A. I presume very much like that.

Q. But I mean filed under a motion.

A. That wasn't filed under a motion.

Q. I thought Auditor Weston made the motion?

A. He made a motion that we proceed to ascertain the value of the tangible property, and that was the outcome.

Q. When you came to consider the capitalization of the net earnings, did you do the same; did you adopt the same course?

A. I don't think there was a motion made as to these others; I don't think the record will show it.

Q. Does this record contain all the motions you made?

A. I presume it does, if that is a certified copy.

Q. Does that contain the motion by Auditor Weston to re-
1368 duce the assessment of the Union Pacific railroad to $10,500?

A. I do not think so.

Q. Wasn't there a motion made to reduce the Union Pacific assessment to $10,500 a mile, and didn't you say you would support it, if it didn't operate to reduce the valuation of the railroads from $46,000,000, or thereabouts, in round numbers?

A. No sir; I have no recollection of anything of that kind.

Q. You say the newspapers didn't have the slightest effect on you?

A. That is correct.

Q. Didn't cause you to swerve one way or the other?

A. I answer it yes.

Q. That it did cause you?

A. That it did not.

Q. Had no effect upon you at all?

A. I answer it did not.

Q. Now, Governor Mickey, under oath you say that the agitation of the question, the demand of the public press, had no effect upon your judgment in this matter at all.

A. I would make that statement positively that it did not.

Q. Didn't cause you to do anything more than you would have done?

A. I would answer the question that it did not.

Q. Well, it didn't cause you to do anything more than you did do?

A. I would say that it did not, and to make it explicit. I would say, it satisfied them as completely as if there had been nothing said in the papers.

Q. You say that all property was assessed at its actual value, values, I mean?

A. Why, the return from the assessors showed that.

Q. You are a banker, aren't you by profession?

1369 A. Yes sir.

Q. Governor Mickey, state whether or not monies and credits in the state of Nebraska were actually valued in 1904?

A. The money that was returned was returned 100 cents on the dollar; that is all the knowledge I have; that is true.

Q. What proportion of it was returned?

A. That would be a hard question to answer.

Q. Did you investigate?

A. We did make inquiry.

Q. What was the result?

A. We found in some places that there was money added that was discovered, that was hidden away, and some of the property in the recent assessment—the assessor from Webster county was in last week, and——

Q. Well, never mind that; I haven't asked you anything about the assessor from Webster County. I asked you would you consider that monies and credits were valued at their actual value where a bank had $20,000, and the assessor valued the monies and credits at $1,000; that is, that he valued it at and only returned it at $1,000, when the bank had $20,000; you would say that he returned the money at its actual value?

A. No sir; I would say he evaded the law.

Q. Now then, you say you have testified, and of course, you must have information on it, in answer to Attorney General Brown's question, that all property was actually valued at its actual value?

A. That is, those that were returned. I think there was monies and credits covered up that were not determined.

Q. Can a man then evade the law—according to your theory, if the bank has $20,000 of his, and the assessor says I value
1370 his money at $1,000, then you say that it has been returned at 100 cents on the dollar, or in other words, at its actual value?

A. The information we have received from the assessors is that they have located money that was not returned.

Q. Lands. You say that was valued at its actual value; that is something you ought to know about, and you say that they were valued at actual value?

A. The Board went over the value very carefully on lands, and studied it—the lands of the state, and we compared the sale value of the previous year, obtained by the land Commissioner to ascertain the relative value of the assessment before we made our equalization.

Q. I haven't asked you that. I ask you is it not a fact that you now swear that the lands of the state of Nebraska were valued at their actual value?

A. My answer is that they were, yes sir.

Q. You say that you got your information from Mr. Follmer, the Land Commissioner, part of it?

A. I said he was instructed previously by the Board to obtain the average sale values in the counties, and he did in eighty some odd counties, and that list we used, and that was taken from the records of each county.

Q. Well, then, the sale value was the assessable value was it?

A. The sale value was the previous value, and we used that to compare with the assessable value, to see how it had been assessed.

Q. Did you find that it compared?

A. We found in 24 counties that it did not; in some few counties it was slightly higher I want to emphasize the fact that the
1371 Board was very careful to make that assessment on the actual value of the land.

Q. Well, you have emphasized it. That is all, Governor Mickey.

Witness excused.

1372 GEORGE W. MARSH, a witness on the part of the complainant is here called and sworn. Being examined in chief by Mr. John N. Baldwin, he testified as follows:

Q. Please state your full name?
A. George W. Marsh.
Q. What is your occupation?
A. I am a coal dealer at the present time.
Q. Where?
A. Lincoln, Nebraska.
Q. Did you ever hold any public position in the State of Nebraska?
A. Yes sir.
Q. What was it?
A. A state position—I was Secretary of State.
Q. Yes sir; that is what I mean. What years, Mr. Marsh?
Q. '91 to '95—I mean 1901 to 1905, instead of '91 to '95.
Q. Oh yes, 1901 to 1905, of course.
Q. When did you become a member of the State Board of Equalization and Assessment of this state?
A. I think in 1904.
Q. That was your first experience—the first time the Secretary of State was a member of the Board? That is, under the new revenue law?
A. Yes sir.
Q. You participated, of course, in the assessment of the railroad properties of the state in 1904?
A. I did.
Q. As a member of the Board, and as Secretary of State?
A. I did.

1373 Q. Mr. Marsh, I wish you would examine Exhibit 74, the figures and writing on which having been agreed in this case to be those of Mr. Bennett, Secretary of the Board, and to show the valuation of the tangible properties of the Union Pacific railroad company in 1904. Do you remember about the Board agreeing on that as the valuation of the tangible property?
A. There was an agreement on some figures, but I am not prepared to say these are the figures.
Q. Well, there was a resolution introduced by Mr. Weston that the Board proceed to make an estimate of the actual value of the tangible property of the various railroads subject to assessment by this Board. Now, it is agreed in evidence here that this Exhibit 74 is the valua- is made in accordance with that resolution.
A. Yes sir.
Q. Then, to identify it, if that is the one, that is the valuation you agreed upon as the tangible property?
A. I presume it is.
Q. Well, you didn't make more than one, did you?
A. No; not that I remember of. I think there was only one made.
Q. But you agreed upon that one as the value of the tangible property, didn't you?
A. Yes sir.

Q. Of the Union Pacific railroad?

A. Yes sir.

Q. And it was that agreement and valuation that you took as a basis to find the entire value of the road?

A. Yes sir.

Q. At the time you took that as a basis of the valuation of
1374 the entire road, what consideration did you give to the information, the best you had and obtainable, as to what the valuation of the entire property of the state, or what was called the grand assessment roll?

A. What consideration did the Board give?

Q. Yes, as to what amount did you talk about, or believe, or assume it to be?

A. Well, the Board had no official figures. I think the estimate generally placed on the entire assessment was about four hundred million dollars—something like that.

Q. That is what was generally talked of at the time, was it not?

A. I think so, as I remember it now.

Q. That was the general assessment of the state, and of which you had information that it would amount to that?

A. That is my understanding, yes, sir.

Q. That was your understanding, anyway, wasn't it?

A. I think that was the talk, as far as I remember it now.

Q. There was talk of it at the time, wasn't there?

A. Yes, sir; I think so.

Q. And so, in making up your estimate, you—while you didn't have accurate knowledge—you believed and thought and estimated that the entire valuation would amount to at least four hundred million dollars?

A. Yes, sir; I think that was the opinion of the Board, generally.

Q. Wasn't it, as a matter of fact? It was talked of generally, and was believed by almost everybody?

A. I think so, yes, sir; talked of, at least.

Q. In the board meetings, I mean?

A. In the Board meetings, yes, sir.

1375 Q. Among others who talked to you was Governor Mickey?

A. I presume all the members of the Board. I can't single out any one person, but I presume that all the members of the Board understood it.

Q. Not what you understood, but what you talked about; that was generally understood, wasn't it?

A. I think so.

Q. When you were arriving at the valuation of the railroads, what consideration was given to the valuation according to the value of the stocks and bonds of the railroads?

A. Well, I don't know, that is pretty hard for me to answer that. Both stocks and bonds were considered by the Board, but the valuation placed thereon would be pretty hard for me to say at this time.

Q. Yes. Did they take into consideration the factor or test of the capitalization of the earnings?

A. That was talked of in the Board meetings, but whether there

was any—whether it was seriously considered at any time, or not, I don't remember.

Q. Well, now, Mr. Marsh, is it not a fact that there were protests made that the valuation of all the property would not reach $400,000,000. or do you recall?

A. No, sir; I don't believe I do; I don't think I recall that at this time.

Q. So then, in your talks, you practically thought that perhaps would be a fair valuation of the grand assessment rolls?

A. As I remember it now, yes, sir.

Q. Do you remember whether they took into consideration the value of the franchise of private car companies when they
1376 made an assessment of these companies?

A. I don't remember. It don't seem to me that they did.

Q. They did not.

A. It don't seem to me so; I don't remember distinctly though about it.

Q. So, to the best of your recollection then, that is the best way we can put it is that they didn't value the franchise of any other public corporation than that of railroads, for instance, private car companies, and the Pullman Palace Car Company?

A. That is as I remember it now.

Q. And they arrived at the valuation of this property simply in accordance with what the statute set forth, whatever that may be?

A. Yes, sir.

Q. Do you remember that the Board made quite large increases of the valuation of the tangible property of the Union Pacific?

A. Yes, sir.

Q. For instance, it increased the rolling stock of the Union Pacific over the assessment of 1903, $757,017.25. You can't recollect the figures, but that is a fact, that they did.

A. Yes, sir.

Q. You had no other evidence before you to make that valuation on than the sworn returns of Mr. Scribner, did you?

A. That is all, as far as I remember.

Q. He made his sworn return, and listed it, and put a value on the property, didn't he?

A. Yes, sir.

Q. And you had no other evidence as to the value of the property did you?

1377 A. Not that I remember now.

Q. But you increased it $757,000, *dollars?*

A. I don't remember the figures, but there was an increase.

Q. That was a mere arbitrary increase of that property, wasn't it, Mr. Marsh?

The ATTORNEY GENERAL: The defendants object to this as calling for a conclusion.

A. Well, I will have to say it was.

Q. You just simply made up your mind to increase that, and increased it that much, whatever these figures showed?

A. Yes, sir.

Q. Now then, you increased tools—our tools $45,097.69, and you had no other testimony before you than that of Mr. Scribner under his sworn statement of the list, character, description and value of these tools?

A. I think not.

Q. Nobody came to testify before you?

A. Not as I remember.

Q. So then, that was increased in the same way, without any further testimony?

A. Yes, sir; I think so.

Q. And the buildings were increased, as these figures show, $239,652.25. Now, state what the fact may be as to your having any other evidence than that of the sworn return and list of Mr. Scribner as to these buildings.

A. I presume we had no other evidence.

Q. You didn't go to look at these buildings, did you?

A. No, sir.

Q. And nobody else testified as to the value of these build-
1378 ings before you?

A. Not to my recollection.

Q. So you then just simply made an arbitrary increase of $239,625.25 of the value of the buildings of the Union Pacific?

A. Yes, sir; I presume that is what it would be.

Q. Mr. Marsh, was there any conversation had, or any statement made by any member of the Board, save Mr. Follmer, as to the value of lands at the time you made this assessment—lands generally now, outside of railroads?

A. I think so.

Q. And what evidence or statements were made as to the value of lands, and what they were supposed to come to, in the assessment of 1904, if you recollect?

A. I don't know as I can recall that, so as to give an answer to it.

Q. You don't?

A. No; I don't think I do.

Q. Well, did you have any evidence before you as to the value of the lands of the Union Pacific, other than the return of Mr. Scribner?

A. Well, we had some values and amounts, as compiled by Mr. Follmer I think, but just the values, or the nature of it, I don't remember, any more than he had compiled values of last year in some of the counties; I don't remember how many. That was the only evidence, I guess, that the Board had before it.

Q. Do you recall a Mr. Ure of Omaha appearing before the Board, of the Omaha Real Estate Exchange?

A. I think that was the name; I disremember, exactly.

Q. Do you remember of hearing him state, in answer to a
1379 question of Governor Mickey, that the lands of the Union Pacific in the city of Omaha and Douglas County were fairly valued by Mr. Scribner?

A. I remember of the conversation, and probably something about it, but I don't remember as to the value, or anything particular that he said about it.

Q. Do you remember that Mr. Ure was being interrogated with reference to the acreage valuation of the Union Pacific in Omaha, he said (reading from report of the meeting referred to):

"They haven't very much property—acreage—there, that is not worth $10,000 a- acre. I would not like to say it was less

"Governor MICKEY: Would it be much less?

"Mr. URE: I think $10,000 would be a fair valuation in the rough."

Q. (continued). Reading that now, do you recall that evidence before the Board at the time? (handing transcript to witness).

A. I remember something of it, not very distinctly. I don't remember it well enough to give an intelligent answer.

Q. Coming back to this opinion or estimate of the Board as to the grand assessment roll, that it would reach four hundred million dollars, do you remember that Mr. Weston cautioned the Board that there had been such an under-valuation that it was doubtful if it would reach that amount, when you were making your assessment?

A. I think there was some such talk as that before the Board by Mr. Weston, but what it was I don't remember exactly.

Q. Well, was it anything like that which I have repeated?

A. Well, I think so; something similar to that, yes sir.

Q. Anyway, you had that up for discussion, pro and con,
1380 as to whether the grand assessment roll would reach $400,000,000, did you not?

A. Yes sir.

Q. Did you ascertain, and did it finally become your judgment that the lands in the state of Nebraska were valued at their actual value?

A. That is the official figures—you mean the assessment?

Q. No, no; we have the official figures; but were lands valued at their actual value for the purpose of assessment in the state of Nebraska?

A. Why, generally speaking, I think not.

Q. Did you form any opinion as to the percentage at which they had been valued?

A. As to the per cent. of valuation, do you mean?

Q. Yes sir.

A. I don't understand you—the valuation they were assessed at, or the valuation they should be?

Q. Were they valued at their actual value, and then assessed at one-fifth of what they were valued at?

A. Why, I think something like fifty four or five per cent., if I understand the question rightly.

Q. What I am getting at is was it your opinion, and is it your opinion that the lands in the state of Nebraska were valued at their actual value, or not?

A. No sir; I don't think they, were.

Q. Not over what per cent. of their actual value?

A. Well, I don't comprehend your question.

Q. Of course, we have to value them at their actual value, and

then we take their assessment value at one-fifth. Now, you
1381 said that they were not valued at their actual value. Do you think they were valued at 70 or 75, or 80 per cent.?

A. Well, probably 75 per cent. of the actual valuation.

Q. That would be your judgment?

A. That would be my judgment of it at this time.

Q. Now, Mr. Marsh, during the session of this board, there was much excitement, wasn't there?

A. Yes sir.

Q. The papers were full of demands of you, as members of the Board, were they not?

A. Yes sir.

Q. And they were demanding a high valuation, were they not?

A. Yes sir.

Q. The World-Herald, the Omaha Bee and the Lincoln Evening News were demanding that the assessment be fifty or sixty millions of dollars, were they not, demanding that you assess the railroads at that figure?

A. Yes sir; I think so, as I remember it.

Q. And there was much pressure on you, as a Board, for a high valuation?

A. Well, there was a good deal of agitation of that kind. Yes, I would say it was meant as a pressure on the Board.

Q. And this agitation was, part of it, preceding the Republican State Convention which met on May 20th in Lincoln?

A. May 18th, yes sir; I think a great deal of it, considerable of it at least.

Q. And Governor Mickey and Treasurer Mortensen were candidates before that Convention for renomination?

A. Yes sir.

1382 Q. Many threats were made about what would be the result unless the Board did give a high valuation, wasn't there?

A. I would not be prepared to answer that, hardly.

Q. Well, we have established that by the papers, anyway, so I will withdraw that. I want to know from you, as a member of the Board, if there was not this tremendous pressure on the Board?

A. Yes sir; the agitation was pretty general through the papers.

Q. And you remember how the Bee was pounding the Board for a valuation of fifty to sixty million dollars?

A. Yes sir.

Q. And saying that it was necessary in order to save the party?

A. I don't remember as to that.

Q. Well, I won't ask you if you recall any of the particular statements made at the time, but that was, in a general way, the character of the demands being made upon the Board?

A. I am not prepared to say that there were any threats made, or anything of the kind, so far as the two candidates for renomination were concerned. It might have been intended that way.

Q. Mr. Marsh, what is your opinion as to the assessment of the Union Pacific railroad? I will call your attention to it direct now, as to its valuation being higher than other railroads, and higher

as compared with the valuation of other properties in this state, your honest opinion about it now?

A. My opinion was that in comparison with other property, it was assessed too high.

Cross-examination.

By Attorney General BROWN:

Q. Mr. Marsh, you agreed to the judgment of the board
1383 fixing the valuation of the road that year, did you not?

A. Yes sir.

Q. That represented your honest judgment at that time? Did it not?

A. It was a kind of a compromise opinion with me.

Q. Did it substantially reflect your opinion at that time, your honest judgment—the assessment you put on it at that time?

A. Yes; or nearly so.

Q. At that time you did not know what other property had been assessed at, or what it would be at all, did you?

A. We knew in a general way.

Q. You had no returns from any of the assessors, did you?

A. No official returns.

Q. Now, when you and the other members of the Board were assessing the railroads that year, you undertook to assess them fairly, did you not? That was your purpose?

A. That was the purpose, yes sir.

Q. You didn't intentionally and arbitrarily over-value the Union Pacific property that year at that time, did you?

A. My opinion at the time was that the increase in valuation would be somewhat of an arbitrary assessment.

Q. You don't mean to say that you thought they should be assessed the same as they had been the year before, do you?

A. Oh, no, no.

Q. Now, Mr. Marsh, you remember the Weston resolution being introduced?

A. Yes sir.

Q. That was the first thing you took up, was to examine the returns of the Company, to make an estimate for preliminary
1384 purposes, as to the value of the physical property?

A. I think so.

Q. Now, you did that, didn't you?

A. Yes, sir; as I remember it.

Q. Now, when you made that estimate, you based it on the returns that the company had made, and after discussion among yourselves, did you not?

A. I think so.

Q. And brought to your assistance your general knowledge of the condition of the road and its properties in the state, did you not?

A. Yes sir.

Q. And after that you reached this conclusion among yourselves as to an estimate on the physical property, is that true?

A. Reached this estimate here?
Q. Yes sir.
A. That was the opinion of the majority of the Board, at least.
Q. Well, did it represent your opinion?
A. No, not with the per cent. added—not wholly, no.
Q. You never consented to that at all?
A. In reality, I did consent to it. The majority of the Board did, and of course, the majority of the members of the Board ruled.
Q. You expressed your consent to the other members of the Board, did you?
A. In making up the valuation, do you mean?
Q. This estimate I am talking about now of the physical property?
A. Yes sir.
Q. Now, after you had done that, then you took up the other tests that the law provided that you should consider, did you not?
1385 A. I think so.
Q. Do you remember whether or not you considered the stock issue of the company?
A. Yes sir.
Q. And its value?
A. Yes sir.
Q. And the holdings of the company in other corporations?
A. Yes sir.
Q. And the values of all its property you considered with the rest of the Board, did you not?
A. I think so.
Q. Figures and estimates were made by different members of the board on that basis, were they not?
A. Yes sir.
Q. You don't remember what they were?
A. No sir; I don't call to mind what the figures were.
Q. Then, after that you discussed the earnings of the road, did you not?
A. I think so.
Q. The net earnings in Nebraska?
A. Yes sir.
Q. Do you remember how much time was put in by the Board on that question?
A. The whole assessment, you mean?
Q. No; in considering the net earnings.
A. No; I do not.
Q. Well, there was some time spent on that?
A. Some time, yes sir.
Q. Were figures and estimates made by different members of the Board on that basis?
1386 A. I think so.
Q. Now, when you came to reach a conclusion as to the assessment, you didn't accept either of *this* estimates—the Board didn't, did it?—either the physical property estimate, or the bond

and stock estimate, or the net earnings estimate—you didn't accept either one of these as the sole basis?

A. No, not in relation to the estimate.

Q. Did you, as members of the Board, consider all these three features?

A. Yes sir; I was there with the other members.

Q. And after discussion you reached the conclusion at that time that the Union Pacific in Nebraska should be assessed at about fifty two million dollars, did you?

A. I don't remember the figures.

Q. Well, whatever the assessment was, that was the conclusion you came to after considering these things I have mentioned before?

A. Yes sir.

Q. Now, Mr. March, you agreed to that conclusion, as a member of the Board, did you not?

A. Well, it might be called an agreement.

Q. Well, you voted for it, didn't you?

A. I don't remember how the vote was.

Q. Did you vote for that or against it—against or for that valuation of the Union Pacific Railroad Company that year?

A. Well, if the record shows I did, I guess it is correct.

Q. Now, Mr. Marsh, in assessing the railroads that year, you were governed entirely by the evidence you had before you, were you not?

1387 A. Yes sir; that is what governed my mind.

Q. Did this tumult and clamor and these editorials that counsel has spoken about influence you to increase their assessment?

A. I can't say that it did.

Q. You were undertaking to do your duty, were you, Mr. Marsh?

A. Yes sir; that is what we were there for.

Q. You had no other interests to serve, did you, except that of performing your duty?

A. No sir.

Q. Now, in fixing the valuations, you had nothing to do with the valuations put by assessors on other property, did you?

A. No.

Q. Did the talk that was had there about the grand assessment roll being $400,000,000 influence you to over-assess the railroads?

A. I think not.

Q. Did it in any way affect the figure that was finally put on the railroads?

A. I think not.

Q. You are not certain whether the franchise of private car companies were considered and assessed by the Board?

A. I think they were not.

Q. You think they were not, but I understood you to say you were not certain about it?

A. No sir; I don't think the franchises of the private car companies, as I remember it—they were not assessed.

Q. In Follmer's valuations of land that you speak about, he got that, didn't he—he went out and got that after you had assessed the

railroads, didn't he? and brought it to you for consideration when you were sitting as a Board of equalization of properties as-
1388 sessed, between the counties?

A. Well, I don't remember whether that was before or after the assessment of the railroads. I know that we had such figures before us, but as to the time, I don't remember what the time was.

Q. You remember that you determined as a Board of Assessment, the value of the railroads, before meeting as a Board of equalization, did you not, Mr. Marsh?

A. Yes.

Q. When you were sitting as a Board of Equalization, you were then considering the values of other property, were you not?

A. Yes sir.

Q. Before that you had simply been considering the values of railroad property, isn't that so?

A. Yes sir.

Q. Now, when you were equalizing, or considering the values of property other than the railroads, then it was that Follmer went out at the request of the Board, and examined the records to show the sale considerations of lands, isn't that true?

A. Well, I can't say as to the time. I know he was out and got the valuation of real estate, but whether it was before or after—whether it was during the last meeting of the Board of equalization, or——

Q. He didn't bring his figures to you when you were assessing the railroads, did he? He brought the figures to you when you were equalizing the values of other properties, isn't that true?

A. That's what I can't remember.

Q. Well, now, after thinking about it, what do you say as to which time it was that he brought you these figures?

1389 A. Well, the supposition would be that it would be after the assessment, but whether it was or not, I am not prepared to say.

Q. What is your best recollection now as to when he brought them?

A. Well, it is pretty hard for me to say when it was, whether it was before or after.

Q. You would not have any use for the figures when you were assessing the railroads, would you?

A. No sir.

Q. But you would have use for them when you were sitting as a Board of Equalization, wouldn't you?

A. Yes, we would.

Q. I wish you would try to refresh your memory and state what is your best recollection as to when it was that he brought these figures.

A. The presumption would be that it was when we was sitting as an Equalization Board. I am not positive as to that.

Q. Now then, when you were sitting as a Board of Equalization of values made by the assessors of property other than the railroads, were complaints made to the Board respecting these values?

A. Yes sir; by the different counties, I think so.

Q. And the different railroads, too; they claiming that other property had been under-valued?

A. I think so.

Q. And you considered these complaints—you and the Board?

A. Yes; the Board would have to take them into consideration.

Q. Now, after considering these complaints, which alleged under-valuation by the assessors of property other than railroads in the state, your Board increased valuations in several counties, did

1390 it not?

A. In some counties, yes sir.

Q. Do you remember about how many?

A. I don't remember the number, no.

Q. Would you say it was 24 or 25?

A. Somewhere along there, twenty to twenty five, I guess.

Q. Do you remember the per cent. that it was raised—the range of per cent. that it was raised?

A. I don't remember the average that it was; it was a different per cent. on different counties.

Q. Would you say from five to fifteen per cent.?

A. I think five was the lowest; I don't remember whether 15 was the highest or not.

Q. Was property in your county of Richardson so increased by the Board 10 per cent?

A. I think so.

Q. Now, that increase was made in order to bring these valuations of property in these counties up to what it was actually worth, wasn't it?

A. Up to something near the valuation of other property.

Q. To represent, in your judgment, the actual value of the property, did it not, approximately?

A. The judgment of the Board—the majority of the Board, at least.

Q. That was the judgment of the majority, that in these 24 counties property had been under-valued?

A. Yes sir.

Q. And in the other counties of the state where they made no change, it was the judgment of the Board that the property

1391 had been fully assessed?

Q. Well, I am not prepared to say that it was the judgment of the Board that it had been fully assessed.

Q. Why didn't they raise it then?

A. I don't know as to that.

Q. You raised it in the counties where the Board thought it was assessed too low, did you not?

A. Yes sir.

Q. And you left it the way it was in the counties where you thought it was assessed approximately right, did you not?

A. In the counties where, in the opinion of the Board it was extremely low—but I am not prepared to say whether the others—well, it was taken probably as a fair assessment. I don't think it was the opinion of all the members of the Board that it was a fair valuation of its actual value.

Q. That was the judgment of the Board?
A. That was the judgment the Board arrived at, yes sir.
Q. Now, Mr. Marsh, at that time, do you mean to say that you thought that lands were only assessed at 75 per cent. of their value?
A. Yes sir; most of them; a good many of them—especially where I was well acquainted with the real estate values.
Q. In lands generally over the state, do you solemnly swear now that it was your judgment then, sitting as an officer bound to assess that property at what it was worth, that it was your judgment then that at that time it was only valued at 75 per cent.?
A. I said in my answer a while ago, approximately 75 per cent.
Q. And that was your judgment then?
1392 A. Yes sir.
Q. And yet you voted for the judgment of the Board, did you not?

Judge BALDWIN: The complainant objects to this as being improper, unfair, incompetent, immaterial and irrelevant.

A. I think so, as a compromise or settlement of the question before them.
Q. Did this talk about the grand assessment roll reaching four hundred million dollars influence you in reaching your judgment?
A. I think not.
Q. Mr. Marsh, upon your direct examination, Judge Baldwin asked you this question: "Mr. Marsh, what is your opinion as to the assessment of the Union Pacific railroad? I will call your attention to it direct now, as to its valuation being higher than other railroads, and higher as compared with the valuation of other properties in this state, your honest opinion now?" to which you answered: "My opinion was that in comparison with other property it was assessed too high." Now, was it assessed too high in comparison with other railroads?
A. With other property generally.
Q. I am talking now about other railroads.
A. It may not have been assessed too high in proportion to other railroads.
Q. The fact is, the Board used the same test with respect to all railroads in fixing their value?
A. I think so.
Q. Now then, Mr. Marsh, how much was the Union Pacific overvalued at that year?
1393 A. That is a pretty hard question to answer.
Q. What is your judgment about it?
A. I can't give an intelligent answer to the question.
Q. At the time that you agreed to that assessment, Mr. Marsh, didn't it represent at that time your honest judgment as to what the road was worth that year in this state?
A. No sir; hardly.
Q. How much did it go over?
A. Well, it would be probably the difference between the per cent. of increase in that and the other property.

Q. Well, when you as assessor were fixing the value of the railroads, you were fixing it independently of the value of other property, were you not?

A. Yes sir.

Q. When you voted to fix the value of the Union Pacific at $52,000.00, in round numbers, you did it independently of the value of other property, did you not?

A. Yes, because we had no figures of any other assessment, or the assessment of any other property.

Q. Now, independently of the value of any other property, was your judgment then that the property was worth actually $52,000,000 in this state?

A. Well, it may have been.

Q. Do you say it was, or was not, Mr. Marsh?

A. Well, I would have to say it was.

Redirect examination:

Q. Now, Mr. Marsh, under the law of 1903, it was the duty of the Board to assess the value—the actual value—of the railroads
1394 of the state, including the Union Pacific; In 1903 the Board assessed the Union Pacific at its actual value, sworn to do their duty—at $6,323,332.00; in 1904 the Board found one-fifth, found the actual value of the Union Pacific at $52,758,050. Now, sir, did you have any evidence before you of any kind or character which showed that the Union Pacific was worth over eight times more in 1904 than it was in 1903. If so, state. There wasn't any such evidence before you, was there?

A. No sir; not as I know of.

Q. I am giving you the figures. You were not on the Board in 1904?

A. No sir.

Q. I am telling you what the figures were, Isn't it a fact that there was a slight increase of the value of the tangible property, and that the net earnings were only increased $84.00 per mile in 1904, over 1903, isn't that correct?

A. Well, I don't know as to the figures.

Q. Well, these are the figures. It was slight anyway, wasn't it? Your recollection is it was a slight increase?

A. I don't call to mind.

Q. Well, it wasn't shown to be worth 8 times more, was it?

A. No sir; I think not.

Q. Now, Mr. Marsh, we are speaking of your judgment. You concurred in that report, of course, but all the time during that session, you knew that that assessment was too high, and you fought against it, didn't you?

The Attorney General: The defendants object to this as calling upon the witness to impeach his own judgment.

1395 Q. You fought all the time, didn't you, to have the Union Pacific reduced, didn't you?

A. Well, in some instances, yes sir.

Q. Why, you made motions to reduce it, didn't you?
A. I think once.
Q. And it was your opinion then at that time the Union Pacific assessment was too high, wasn't it?
A. In comparison with other assessments.
Q. While you didn't have any statutory returns, that Board had information with reference to the way other property was being assessed, and you had your own judgment as to whether that property was being valued at its actual value, didn't you?
A. Yes sir, to some extent I think.
Q. And you had taken that into consideration in your own mind, when you made this judgment, hadn't you?
A. Yes sir, to some extent.
Q. So, when you testified in the examination in chief, considering all these things, that in your opinion the Union Pacific was assessed too high——
A. In comparison with other property, I said, yes sir.
Q. I don't care anything about whether you concurred. You made a compromise, didn't you?
A. Yes sir.
Q. You had to settle this thing some way or another, didn't you?
A. Yes sir.
Q. You had been in session from some time in May until the middle of June, hadn't you?
A. Five or six weeks, anyway.
1396 Q. And you had to settle it one way or the other, didn't you?
A. Yes sir; it had to be settled some way.
Q. So you surrendered your real convictions about it in order to have it settled?
A. To some extent.
Q. Well, isn't that correct, Mr. Marsh?
A. Well, I would have to say it was, as far as I was individually concerned.

Witness excused.

1397 GEORGE D. BENNETT, a witness on the part of the complainant is here called and sworn. Being examined in chief by Mr. John N. Baldwin, he testified as follows:

Q. What is your full name Mr. Bennett?
A. George D. Bennett.
Q. Where do you live?
A. Lincoln, Nebraska.
Q. What is your position?
A. I am Secretary of the State Board of Equalization and Assessment.
Q. How long have you been secretary of such board?
A. Since December 1903.
Q. You then were secretary during the sessions of 1903 and 1904?
A. I wa clerk and book-keeper of the State Auditor in 1903, and Secretary of the State Board in 1904.

Q. You were not Secretary of the Board in 1903?
A. They had no secretary under the old statute.
Q. Did you act in that capacity in aiding the Board in 1903?
A. I acted as clerk of the Board at that time, being book-keeper for the State Auditor.
Q. Well, you are the same George D. Bennett that certified to the transcript of the proceedings before the Board in 1904?
A. I am.
Q. That does not contain all the proceedings, does it; that certificate of yours?
A. All of the records?
Q. Yes; all the record, but it does not contain all the motions that were made. Examine, there is the one you certified to, (indicating the transcript marked Exhibit 67) for instance, the mo-
1398 tion made by Mr. Secretary Marsh to reduce the assessment of the Union Pacific, which was voted on, isn't in that proceeding, is it?
A. No; I presume not.
Q. Why not?
A. In the meetings of the board there were numerous motions made that appeared to be minor, and they were not made a part of the record.
Q. Did you exercise your judgment as to what should be put in there, alone?
A. No; I can't say that I did.
Q. Who, then, determined what motions should go in and what motions should be excluded?
A. The Board.
Q. The Board told you what motions to put in and what not to put in, did it?
A. Yes, sir.
Q. The Board—what member of the Board told you to keep from the record the motion of Mr. Secretary Marsh to reduce the assessment of the Union Pacific?
A. I don't know.
Q. You can't tell?
A. No, sir.
Q. Can you tell—mention the name of any member of the Board who told you to keep motions from the official record.
A. No.
Q. Can't think of one?
A. No.
Q. They did, though?
A. Yes; it was agreed, as I remember it, that certain minor
1399 motions were not necessary to go on the record.
Q. Well, agreed by whom?
A. The members of the Board.
Q. All of the Board?
A. I presume so.
Q. That's good; they agreed that certain minor motions—the Board agreed to exclude from the official record the motion of Mr.

Secretary Marsh, which was seconded by Mr. Weston, to reduce the valuation of the Missouri Pacific to $10,000 a mile, did they?

A. Well, I presume. It does not appear in the record.

Q. There was such a motion made?

A. I don't remember as to that.

Q. You don't remember whether that motion was made or not?

A. No; I do not.

Q. Do you remember of a single, solitary motion that was made at all that wasn't put in this record?

A. I don't believe that I do.

Q. Then, what in the world did they make the agreement for to keep them out?

A. I don't know as to that.

Q. Well, there were some motions that were kept out, weren't there?

A. Yes, sir; I presume so.

Q. You know so, don't you?

A. Yes, sir; I do.

Q. One of them you didn't put in the record was the motion made by Mr. Marsh, and seconded by Mr. Weston to reduce the assessment of the Union Pacific?

1400 A. I don't remember it, Mr. Baldwin.

Q. Were you present at the meetings of the Board always?

A. No, sir; not always.

Q. When you were not present and any action was taken, where did you get the information?

A. There was usually a minute kept of it by Mr. Weston.

Q. And that was given to you?

A. Yes, sir.

Q. Mr. Bennett, I would ask you to swear what you know about the talk that existed there with reference to the opinion that the grand assessment roll would amount to four hundred million dollars?

A. There was such talk.

Q. Well, to what extent?

A. Well, it was talked by the members of the Board at numerous sittings.

Q. And it was the general opinion was it not, that the grand assessment roll would amount to in the neighborhood of four hundred million dollars.

The ATTORNEY GENERAL: The defendants object to this on the ground that it is assuming that the witness knows the opinion of others than himself.

Q. Well, I am asking about the general opinion.

A. It was so expressed by some of the members of the Board.

Q. Wasn't it expressed by Governor Mickey himself?

A. Yes, sir.

Q. He believed that the grand assessment roll would amount to $400,000,000?

1401 A. I believe that he believed that, yes, sir.

Q. Well, he so stated that to you?

A. Yes, sir.

Q. Answer that, did he not?
A. I said yes, sir.

Cross-examination.

By Attorney General BROWN:

Q. There was a discussion, Mr. Bennett, was there not, at the time this law was before the legislature that it would increase the grand assessment roll of the state many millions of dollars?
A. Yes, sir.
Q. There was a discussion everywhere about increased valuations under the new law?
A. Yes, sir.
Q. Do you pretend to testify that the Board acted on any assumption or belief in fixing the value of the railroad properties that the assessment roll would reach $400,000,000, or any other sum?
A. No, sir.
Q. From your observation of the Board and its deliberations in the year 1904, what do you say as to whether the Board exercised its own judgment in good faith in ascertaining the value of the railroad property.

The Complainant objects to this as being incompetent, immaterial and irrelevant, something to which no man can testify.
A. I presume they did.

Witness excused.

1402 At this time an adjournment was taken until tomorrow morning, September 27, at 10 o'clock.

Septen ber 27, 1905, 10 o'clock a. m., all parties met pursuant to adjournment, and further proceedings were as follows:

Mr. CHARLES WESTON a witness on the part of the Complainant was called and duly sworn. Being examined in chief by John N. Baldwin, Esq., he testified as follows:

Q. Mr. Weston where is your residence?
A. Hay Springs, Nebraska.
Q. You were at one time Auditor of State?
A. I was.
Q. What years, Mr. Weston?
A. From January 3, 1901, until January, 1905.
Q. Two terms?
A. Two terms, yes, sir.
Q. As Auditor of State you were *ex-officio* a member of the State Board of Assessment and Equalization of the State of Nebraska during those years?
A. I was.
Q. You took part in the assessment of the railroad properties of the state of Nebraska in 1903?
A. I did.
Q. For the purpose of refreshing your recollection I would call

your attention to the fact, Mr. Weston, that the Union Pacific properties in the state of Nebraska were assessed at $6,323,332.00?

A. That was for 1903?

1403 Q. Yes, $6,323,332. You did not understand at that time, of course, and do not say now, that that represented the value of the Union Pacific properties in the State of Nebraska?

A. No sir.

Q. Well the law at that time provided that property should be valued at its actual value, but that wasn't done?

A. No sir, the attempt at that time was to assess railroad property on the same basis that all other property in the state was being assessed on.

Q. And all other property in the state was not being assessed at its actual value at all in that year, and for years before?

A. That seemed to be the case.

Q. And is it not a fact that for years before, and during that year, that property was assessed at from ¼ to 1/15 and 1/20 of its value?

A. Yes sir.

Q. And so in accordance with the custom of the assessment of all other property, you assessed what you thought was the value of the Union Pacific in conformity with the assessment of all other property?

A. That was the theory upon which the Board made its finding.

Q. In other words that you attempted to have the property assessed uniformly?

A. Yes sir.

Q. In order that neither the railroads nor any other class of tax payers should bear any greater burden of taxation than any other?

A. That was the idea of the Board.

Q. The Board tried to have it uniform to comply with the constitution of the State of Nebraska?

1404 A. Yes sir.

Q. You were a member of the Board of Equalization and Assessment in 1904?

A. Yes sir.

Q. And the law was the same in 1904 as in 1903, as to finding the actual value of all property wasn't it?

A. Yes sir.

Q. And the provision in the new revenue law was that the assessable value should be 1/5 of the actual value?

A. Yes sir.

Q. Mr. Weston you found the actual value of the Union Pacific Railroad Company in 1904 to be $52,878,050, or nearly 8½ times more than the actual value as found by the Board in 1903, did you not?

A. I don't remember what the figures are, but I presume those are correct.

Q. Well assuming that those figures are correct?

A. Yes sir.

Q. Mr. Weston was there anything in the way of evidence sub-

mitted to you to show that the Union Pacific was worth—that the properties in the list were worth 8½ times more than they were in 1903?

A. All the evidence we had was the schedule filed by the Company, and our personal knowledge of conditions.

Q. But you had nothing to show that it was worth 8½ times more?

A. No sir we had nothing that would show that specifically.

Q. Isn't it a fact that the net earnings, for instance, of the Union Pacific, were only $84.00 per mile more in 1904 than they were in 1903?

1405 A. I don't remember.

Q. Well in that neighborhood?

A. I don't remember and I can't tell without referring to the schedule.

Q. Now Mr. Weston, after examining such records as you have before you, including your report as Auditor for 1904, state what,—how much increase there was in the net earnings of the Union Pacific?

A. I find that the net earnings of the Union Pacific, as returned by the Company, are $84.45 more in 1903 than in 1902, per mile.

Q. That is correct, you speak of 1903 and 1902. You made your assessment on those returns, for 1903 and 1904, in other words the returns ending December 31, 1902, are what you had before you from which to make the assessment of 1903, and the returns of net earnings for the year ending December 31, 1903 was what you had before you making the assessment of 1904?

A. Yes sir.

Q. And there was an increase of $84.00 per mile in the net earnings?

A. Yes sir.

Q. Now without going into detail, there was no particular increase in the amount of the tangible property reported by the Company in its sworn statements in 1904 and 1903?

A. I don't think there was any particular increase. That is my recollection at the present time.

Q. So then, with but a slight increase in the property, in arriving at the valuation in 1904, you endeavored to attain more nearly the actual value of the property, taking 1/5 thereof for the assessable value?

A. Yes sir.

Q. In 1904 what consideration did you give, in the for-

1406 mation of your judgment, as to the value of all other kinds of property, other than railroad property?

A. In making up the railway assessment we did not take that into consideration at all. We were simply guided by the law that required us to list property at its actual value and assess it at one fifth.

Q. But you made no investigation as to the value of other properties such as lands, live stock, merchandise, moneys and credits and so forth?

A. No sir we were simply attempting to perform our duty as the

law was laid down, presuming that the local assessors would do the same.

Q. And you did not take it into consideration in the formation of your judgment at all did you?

A. No sir I think not.

Q. You knew that the law was the same in 1904 as in 1903 with relation to finding the actual value?

A. Practically the same, yes sir.

Q. The only difference was as to what per cent. of the actual value was to be taken for the assessable value, wasn't it?

A. Yes sir.

Q. In 1903 you have sworn, and I suppose it is true, that in order to see that the railroads did not bear any greater proportion of the burden of tax than other tax payers you knew and investigated the question as to what other property would be assessed at in 1903?

A. Yes sir we knew what the practice had been for years past.

Q. And so then in order to be uniform why you fixed the
1407 valuation of the Union Pacific, the actual valuation of the Union Pacific at 6 million of dollars in round numbers?

A. Yes sir.

Q. You didn't do that in 1904?

A. No sir.

Q. The assessors were at work throughout the state making their assessments as to the other properties were they not?

A. At the time we were sitting as a Board, yes sir.

Q. The law required them to begin the first of April, I think, wasn't it?

A. I think so.

Q. And you were in session from May—some time in May until June 16th before you delivered your findings?

A. Yes sir.

Q. So that you were practically in session a month?

A. More than that—six weeks.

Q. Six weeks?

A. Yes sir.

Q. Now under the law the assessors of other properties, other than the railroads, had to get their reports in by the first of July?

A. I believe so.

Q. So when you delivered your findings you were within about fifteen days of their final returns?

A. Yes sir.

Q. Mr. Weston is it not a fact that some members of the Board were of the opinion, some at least, were of the opinion, and so considered it, and so stated, that the grand assessment roll of all properties of the state would amount to about $400,000,000.00
1408 when you were assessing the railroad property?

A. I heard talk to that effect.

Q. Didn't they believe it and so state it?

A. I don't know.

Q. Why they so stated it to you didn't they?

A. I think so, yes sir.

Q. Isn't it a fact that you yourself cautioned them about it and stated that in view of what the practice had heretofore been that they wouldn't find the actual value?

A. My idea had been all along that the grand assessment would not reach the figures that had been anticipated.

Q. And didn't you state in the discussions that in your opinion, in view of the practice heretofore, that the assessment would not be much, if any, over $300,000,000.00?

A. I presume I made that statement because that was my opinion then, as it had been prior.

Q. And your opinion was verified by subsequent events?

A. Practically, yes sir.

Q. The Grand Assessment Roll is $295,000,000.00?

A. Yes sir.

Q. You placed yourself on record at the time that in view of your experience and in view of what had been the custom and practice before, that in your opinion the grand assessment roll would not be much, if any over $300,000,000.00?

A. Very likely I made that statement because I know that was my opinion. We had some discussion of the matter I remember, but just what was said I don't remember.

Q. I am refreshing your recollection now, that as a matter of fact certain members of the Board stated in their opinion the Grand assessment roll would reach $400,000,000.00?

A. Yes sir.

Q. And you cautioned them about that, stating that in
1409 your opinion it would not be over $300,000,000.00?

A. Yes sir I think very likely that it is the case.

Q. Mr. Weston you introduced a resolution before this Board which was in effect that the Board proceed, as a preliminary step to the ascertainment of the tangible property of the various railroads, and that the same when ascertained, be taken as one of the factors in making up the total assessment of the railroads, did you not?

A. Yes sir.

Q. And that motion was amended and defeated and then carried?

A. Yes sir I believe so.

Q. Please examine Exhibit 74, which is admitted to be in the hand-writing of Mr. Bennett, secretary of the Board, and state as to that being a result of the determination of the Board, in accordance with your motion?

writing of Mr. Bennett, secretary of the Board, and state as to that being a result of the determination of the Board, in accordance with your motion?

A. The Board tabulated the tangible property of all the railroads and made the finding as to the valuation, and noted that valuation upon this table that was made, and if this is an exact copy of that tabulation it is correct.

Q. In the matter of the list, description, amount, number, character, weight and so forth, of the tools of the Union Pacific Railroad Company, you had to rely upon the sworn statement of Mr. Scribner before you did you not?

A. We had that statement, yes sir.
Q. Well did you not have to rely upon that?
A. Largely, yes sir.
Q. What other evidence did you have as to character, list, description, quantity, number, weight and so forth of the tools of the Union Pacific Railroad?
1410 A. We had no other evidence.
Q. Mr. Weston as to size, weight, quantity and description of the rolling stock of the Union Pacific Railroad Company, what other evidence did you have than the sworn statement of Mr. Scribner?
A. We had none. I suppose by the "sworn statement of Mr. Scribner" you have reference to the schedules returned by the road?
Q. Certainly, certainly, the itemized statement, or list?
A. Yes sir.
Q. Mr. Weston, as to size, number, character and description, of the buildings of the Union Pacific Railroad Company, station houses, depots, section houses and so forth, what information did you have other then the sworn statement of Mr. Scribner in the schedules?
A. None whatever except our general knowledge of the condition of the property, that was open to observation and inspection.
Q. Just what was open to observation?
A. And inspection, yes sir.
Q. As to lands and lots what information did you have other than the sworn statement of Mr. Scribner, as to the number of acres and the number of the lots?
A. We had none.
Q. Of course the right of way was a matter practically of description, returned by the tax commissioner, and was taken in accordance with its mileage?
A. Yes sir.
Q. You increased the value of the rolling stock of the Union Pacific over the sworn returns of Mr. Scribner $757,000.00 in round numbers?
1411 A. It that the question?
Q. Well I will complete it. What information or evidence did you have to base that increase upon?
A. None.
Q. You increased the value of the tools of the Union Pacific in round numbers $45,000.00. What other evidence did you have than the sworn return of Mr. Scribner?
A. Not any.
Q. Mr. Weston isn't it a fact that the Board of Equalization and Assessment of the State of Nebraska in 1904, in arriving at the value of the Union Pacific Railroad practically based it upon the value of the stock and bonds?
A. Yes I am inclined to think that is a fact, as near as the Board could figure out that proposition.
Q. Well there is no doubt about it?
A. There was in the minds of the Board.
Q. Well there isn't in your mind but what the Board finally got

at the value of the Union Pacific according to the stock and bond issue?

A. Oh I think that is true in the main.

Q. Mr. Weston, in arriving at the value of the Pullman Palace Car Company's property in this state you followed the statute as near as you could, didn't you?

A. Yes sir.

Q. The statute requiring—in the case of sleeping car companies—that they should report the total number of cars of each class used in transacting business upon all the lines running into and through this state, second, a fair average value per car of each of the classes of such cars; third: The total number of miles of railroad main track
1412 over which such cars are used in this state, and within each county in this state. Fourth: The total value of such cars due to his state as the number of miles of railroad main track over which such cars were used within this state bears to the total number of miles of railroad main track over which such cars are used, and the value per mile. And then that the Board shall ascertain and fix the number of each particular class of cars used in transacting the business upon all lines running into and through this state, and, as nearly as possible, the true value of all of the different classes of cars used upon lines running into and through this state; and the state board shall assess that proportion of such total value which the number of miles of railroad main track over which such cars were used within this state bears to the total number of miles of railroad main track over which such cars were used everywhere. Such assessment shall be included in the records and proceedings of the Board, and shall be prorated among the several counties traversed by railway carrying said cars, and shall be apportioned by the county clerk as provided in section 96.

And you complied as near as you could with that statute in the assessment of the sleeping car companies?

A. Yes sir.

Q. You did not take into consideration any franchise right, if forsooth, it had any, of the sleeping car companies.

A. I think that is right.

Q. You simply took and followed the statute as nearly as you could?

A. Yes sir.

Q. Now with reference to other car companies such as furni-
1413 ture cars, stock cars, refrigerator cars, poultry cars, tank cars, or any other cars belonging to any other company, you followed the statute with reference to the assessment of the value of such companies?

A. Yes sir.

Q. You did not take into consideration, in estimating the value of such properties, any franchise rights, if such they did possess?

A. No sir.

Q. Mr. Weston do you remember the motion that was introduced by Mr. Marsh and seconded by you asking for the reduction—asking that the Union Pacific be assessed at 10,500 dollars per mile?

A. Yes sir I think there was.
Q. And that was defeated?
A. Yes sir I believe so.
Q. Well isn't that correct?
A. Yes sir.
Q. And didn't you move before the Board and wasn't it seconded by Mr. Marsh that the Union Pacific be assessed as a Unit, and that the value be distributed equally over Nebraska, over all the Nebraska mileage?
A. I made that motion with reference to all the roads.
Q. And that was defeated?
A. Yes sir.
Q. What was really done by the Board with reference to assessing the Union Pacific as a unit?

A. The aggregate value of the entire property in the state
1414 was ascertained as a whole. My motion followed to make a uniform assessment per mile without distribution as between main lines and branches. That was defeated and the Board proceeded to make distribution as between main line and branches, which seemed to me to be to some extent arbitrary.

Q. That was made after you had ascertained the value?
A. After we had ascertained the aggregate of the value of the entire system.
Q. In the state?
A. Yes sir.

Cross-examination.

By Attorney General BROWN:

Q. You say there was talk among the members of the Board with respect to the Grand Assessment roll of the state for the year reaching $400,000,000.00. Did the Board make this valuation of railroad property for assessment that year, because some of them believed that the grand assessment roll would reach $400,000,000.00, or did they make the valuation of railroads that year with reference alone to the real and actual value of the road?
A. My impression at the time was that the Board were endeavoring to ascertain the actual value of the road.
Q. Independent of what the grand assessment roll might be?
A. Yes sir.
Q. Now as a preliminary step to ascertaining the value of the Union Pacific Company, you first considered the returns of the railroad with respect to the physical property, did you not?

1415 A. Yes sir.

Q. And you made an estimate of the physical property as indicated by exhibit 74?
A. Yes sir.
Q. It was understood at the time that that estimate was simply to be one of the factors, one of the considerations, when you came afterwards to fix finally the real value of the property?
A. Yes sir that was the language of my motion.

Q. And it was for no other purpose that you made that estimate?
A. No sir.
Q. Now after you made that estimate then you took up the stock and bond values of the road?
A. Yes sir.
Q. In considering the stock and bond issue of the road, did the board consider the values of the stocks and bonds?
A. Yes sir.
Q. And the mileage of the company?
A. Yes sir.
Q. You accepted as true the amount of stock outstanding, as returned by the Company, did you not?
A. Yes sir.
Q. And the amount of bonded indebtedness as returned by the Company?
A. Yes sir.
Q. And the amount of holdings and securities in other corporations by the Company?
A. Yes sir.
Q. But the values of the stocks and securities the Board itself found, didn't it?
1416 A. I don't remember whether the company, on its schedules, made a return of the market value of the stocks and bonds. On some other of the roads they did.
Q. But you don't remember as to this company?
A. I don't remember. The schedules would show.
Q. But the Board considered, did it not, the values of those stocks and bonds, and of the securities held by the Company?
A. Yes sir.
Q. Figures and estimates were made by the dif-erent members of the Board on that basis, were they not?
A. Yes sir.
Q. Similar to the figures I mean—like the plan shown on Exhibit 74?
A. Yes sir, but there was no tabulation of those figures made and preserved.
Q. None made by the secretary of the Board?
A. No sir.
Q. Each member of the Board made his own figures in that respect?
A. Yes sir.
Q. Now after that did you consider the earnings of the Company?
A. Yes sir.
Q. Did you consider what the road would be worth as tested by the capitalization of the net earnings?
A. Yes sir we tried to figure it out on that basis.
Q. And similar estimates were made on that test by individual members of the Board?
A. Yes sir.

Q. Do you remember what rate the Board thought the earning should be capitalized at?

1417 A. The Board did not arrive at any settled conclusion as to that, but estimates were made on the basis of four, five, and six per cent., at no higher rate than six per cent. capitalization.

Q. If that were to be used as a test, a six per cent. rate was considered by the board to be about a fair rate, wasn't it?

A. The 6 per cent. rate had been adopted, or designated by some of the Courts, I believe, and the Board figured on that basis, although it was not definitely adopted.

Q. Now then, the earnings of the Union Pacific, according to their return to you were $5,566.82 per mile in the state of Nebraska?

A. Yes sir.

Q. That capitalization at 6 per cent. would make the road worth——

A. Something over $90,000 per mile.

Q. Yes; now then, after these different tests were made the Board did not adopt did it, either the physical property test, or the stock and bond test, or the net earnings test, but used those three tests as factors in reaching the final conclusion?

A. I think that is true. The Board couldn't come to any definite conclusion, either on the net earnings basis, or on the stock and bond basis; that is, they couldn't figure it out to a finality, to a point they could all agree on, beyond which there could be no further controversy.

Q. But you did agree after considering them all, that the value of the road in this state that year was fifty two million dollars in round numbers?

A. I believe so, yes sir.

Q. In reaching that conclusion, Mr. Weston, were you or the board influenced by the public press, or public clamor?

A. I was not. I can't speak for the other members of the board.

1418 Q. In reaching that conclusion, were you or the Board influenced by the effect it might have on those of your political party?

A. I was not, I don't know what the other members of the Board thought.

Q. Well, from your discussion with the other members of the Board, did you think they were?

A. I didn't think they were, no sir.

Q. Don't you know, Mr. Weston, that every member of that Board, including yourself, made an unusual effort to fairly assess the railroad properties that year?

A. I think so; we were at work at it six weeks.

Q. And you used the same, generally speaking, tests, with respect to all the roads, that you used with respect to the Union Pacific, did you not?

A. Yes sir.

Q. Did the Board intimate and find the value of the roads that

year for assessment purposes by investigation of each road, independent of the other?

A. We took up each road separately, yes sir.

Q. Did the Board first ascertain what the aggregate value of the road in the state would be, and afterwards distribute that value?

A. No sir.

Q. Did the Chairman of the Board, or any member of the board ever announce in your hearing to anybody that the board had determined that the aggregate valuation of all the roads in the state would be approximately forty five or six million dollars?

A. Not in my hearing, no sir.

Q. Well, let me finish.

A. Oh, excuse me.

Q. And that afterwards the Board would distribute that valuation?

1419 A. No sir; not in my hearing.

Q. Was anything of that kind ever talked by the members of the Board in your presence?

A. No sir.

Q. Now, Mr. Weston, after assessing the railroads, the Board adjourned as an assessment Board and convened July 18th, or thereabouts that year, to equalize the valuations of property other than railroads, didn't it?

A. Yes sir.

Q. At that meeting of the board, when it was sitting as an equalization board, were complaints made to the board of undervaluation of other property in the state?

A. Yes sir.

Q. Is it not true that the Union Pacific railroad company, the complainant in this case, made a protest of that kind to the Board?

A. I think so.

Q. Those complaints were investigated by the Board?

A. Yes sir.

Q. And determined by the Board?

A. Yes sir.

Q. What was the result, in a general way, Mr. Weston, of the Board's investigation of valuation fixed by the county assessors in the state, of property other than the railroads?

A. The result was, as I recall it now, that 24 counties out of the 90 were raised, and none of them were lowered.

Q. Why did you raise the assessment in those 24 counties?

1420 A. Because we felt that the general assessment of the county was below the actual value of the property, as contemplated by the statute.

Q. And in the other counties that you did not raise, was it the judgment of the Board, and of yourself that approximately and substantially their property had been assessed at its actual value?

A. Yes sir; substantially correct.

Q. That judgment was based on evidence and argument heard at the time, and on your general information and knowledge of conditions in the state?

A. Yes sir.

Q. How long have you lived in the state, Mr. Weston?
A. I have lived in the state eighteen years.
Q. And during that time what has been your business?
A. I have been in the live stock business and banking business and grain business.

Redirect examination.

By Judge BALDWIN:

Q. Mr. Weston, you say when you were on the Board of Equalization that you had evidence before you and investigated carefully as to the value of lands when you equalized?
A. We had evidence before us, yes sir.
Q. Well, you have answered the question that you had it, and based your judgment on it; that is correct you say?
A. Yes sir.
Q. Mr. Weston, do you now swear that the lands in the state of Nebraska were valued at their actual value?
A. No sir; I wouldn't swear that.
1421 Q. Don't you know now that they are not assessed at over 80 per cent. of their actual value?
A. No, sir; I wouldn't swear that.
Q. What per cent. would you say?
A. I wouldn't swear as to any positive and certain per cent.
Q. But they were not valued at their actual value?
A. As originally returned by the county assessors, they were not, probably, because in some counties—twenty four counties of the ninety we made quite a substantial raise.
Q. After it is all done, today, I want your opinion, as a citizen of this state, and from the very knowledge you had, do you swear that the lands of the state of Nebraska, that were assessed for this year, were valued in 1904 at their actual value by the assessors?
A. No, sir; I do not swear that.
Q. But that as now returned after equalization they were not valued at their actual value?
A. It was the opinion of the Board at that time that they were substantially valued at their actual value.
Q. But now after it is all over?
A. I don't know what the opinion of the Board is now.
Q. No, but what is your opinion?
A. My opinion is that the land probably was not valued at its actual value.
Q. Now of course you have the same feelings and ambitions as any other individual?

The ATTORNEY GENERAL: We object to that as——

Q. Well I mean that as a preliminary question. You speak for yourself as to the influence of the press when you were mak-
1422 ing your assessment?
A. Yes, sir, I do. I think I swore to that.
Q. There was great excitement just previous to and during the

time, all the time, you were assessing the property was there not?

A. Yes, sir, I think that is undeniable.

Q. Don't you know that the Omaha Bee, the Omaha World-Herald, the Lincoln Evening News and the Journal, for some time prior to the time, and all during the time you were working on that assessment, not only in reports but also in editorials, were agitating this question of the assessment of railroads?

A. Yes, sir, I think that is a fact.

Q. And that bitter and drastic editorials were being written with reference to the same?

A. Well that is a matter of judgment, as to the character of them.

Q. Don't you know that the Omaha Bee was pounding you fellows to assess it at 60 million dollars?

A. Yes, sir, they had a good deal to say along that line.

Q. Didn't it say that unless you did the Republican party would be endangered?

A. I can't say just what language they did use in that respect.

Q. I mean articles to that effect?

A. I think that was quite generally the attitude of the press of the state.

Q. And the Lincoln News went so far as to say that pressure was so strong against you that they did not see how you could do justice to the railroads.

A. I don't remember anything to that effect being in the News.

1423 Q. Well it was in the News. And now for the purpose of refreshing your recollection I will ask you wasn't the Lincoln Evening News, both on its front and inner pages, and on its editorial page, in the most vehement manner insisting that the Board should raise the railroad assessment from fifty to sixty million dollars?

A. The Lincoln Evening News was one of the most active papers in the agitation.

Q. And wasn't its editorials along the line that that was the only way to pull the republican party through?

A. I remember in a general way the attitude of the paper, but I do not remember the specific allegations.

Q. I do not expect to quote to you correctly, or expect you to remember the exact verbiage, but in general that, was the attitude of the press, that that was the only thing to do and the only way to save the republican party?

A. Oh, I think so, yes, sir.

Q. You were not a candidate for office at that time were you?

A. No, sir.

Q. Governor Mickey was a candidate for renomination?

A. Yes, sir.

Q. And Mr. Mortensen?

A. Yes, sir.

Q. The convention was held May 18, wasn't it?

A. I believe that was the date, yes, sir.

Q. And Mr. Mickey was renominated and Mr. Mortensen was renominated, weren't they?

A. Yes, sir.

Q. Isn't it a fact Mr. Weston that when Mr. Marsh made
1424 the motion which you seconded, that Governor Mickey stated right there and then that he would be willing to support that motion if he thought it would not reduce the value of the railroads over $46,000,000.00?

A. I don't remember that he made such a statement.

Q. You don't remember that?

A. No, sir, I do not.

Q. Didn't you state that on June 14, 1904, or some time near that time, or afterwards, that that was so; that when Mr. Marsh made his motion and you seconded it that Governor Mickey said that he would favor that if it wouldn't operate to reduce the aggregate value of the railroads over $46,000,000.00?

A. No, sir; I don't remember it now.

Q. Have no recollection of it?

A. No, sir; I have no recollection of it.

Q. And that—to refresh your recollection—that Mr. Mortensen said that through courtesy to Governor Mickey he would be inclined to favor it, but he didn't see how it could be done without raising some of the other railroads or reducing the aggregate.

A. No, sir; I do not remember that he made such a remark.

Q. Is that another blank to you, Mr. Weston?

A. Yes, sir, I do not remember of the Governor making any such a remark as that.

Q. I would like to have you think over it?

A. Well my memory is pretty clear on that.

Q. And you say that he did not make any such a statement?

A. I do not say that he did not make such a statement, but I say I have no recollection of it.

1425 (Handing the witness a paper.) Do you remember those figures?

A. No, sir; I do not.

Q. Not at all?

A. No, sir. I do not recall that I ever saw the paper or the figures before.

Q. Isn't that a copy of the tabulated statement you made of the assessment of the railroads, that the board found according to the stock and bond issue?

A. The Board made an estimate of the valuation of the roads on the stock and bond basis, and my recollection is that a memorandum was made and possibly endorsed on that tabulation, and if those figures are a copy of that tabulation they are probably correct, as far as that goes, but the Board made several estimates of the different roads, on the stock and bond proposition, but none of them were finally or definitely adopted.

Q. In your tests what did you capitalize the earnings of the Omaha and Republican Valley at?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Well it was a part of it wasn't it?
A. It undoubtedly was.
Q. Of the stock and bond issue?
A. In capitalizing the Union Pacific we took the net earnings as returned for the system, which I supposed included the entire mileage of the system in the state.
Q. And the stock and bonds in the same way?
A. Yes, sir.

Q. Well while you talk about tangible property and while
1426 you talk about capitalization of the earnings the fact is you really found the valuation of these roads according to the stock and bond issue, isn't that correct?
A. I think so, yes sir.

Recross-examination.

By Attorney General BROWN:

Q. According to the memorandum shown you by counsel, the stock and bond test would bring the railroad up to $65,000.00 per mile, on an average, in this state, wouldn't it, Mr. Weston?
A. I think the assessed value of the Union Pacific on the stock and bond theory, as shown on that tabulation, is something over $13,000.00 per mile, which would make the valuation over $65,000. per mile.
Q. Then as a matter of fact you found the valuation of the Union Pacific Railroad Company to be less than what the capitalization of the net earnings showed?
A. I think that is true. The question of net earnings was such a complicated affair that it was unreliable, and as far as the stock and bond proposition was concerned there was a great diversity of opinion among the members of the Board as to what the findings should be, and the finding that was finally made was a compromise judgment as between those conflicting views of the members of the Board.
Q. You were not a candidate that year for renomination?
A. No sir I was not.
Q. Neither was Mr. Follmer, was he?
A. No sir.

Q. Nor Mr. Marsh?
1427–1564 A. No sir I believe not.
Q. But Mr. Mortensen and the Governor were candidates for the second term?
A. Yes sir.
Q. And were nominated by acclamation were they not?
A. Yes sir.

Redirect examination.

By Judge BALDWIN:

Q. Mr. Follmer's deputy was a candidate?
A. Yes sir.
Q. Now we have to come right back again, after all your ex-

perimenting with tangible property and capitalization of net earnings which, by the way, you found unsatisfactory, didn't you?

A. Yes sir.

Q. You really did get at it according to the basis of the stock and bond issue?

A. Yes sir, as I have testified, there was great diversity of opinion among members of the Board as to what the findings should be on the stock and bond propositions.

Q. The fact is you thought of all those things but you really got down according to the stock and bond issue?

A. Yes sir, I think the opinions of the members of the Board ranged all the way from 49 to 80 thousand dollars on the stock and bond basis, and the finding that was finally made was a compromise between these conflicting views.

Witness excused.

1565 GEORGE D. FOLLMER, a witness on the part of the complainant is here called and duly sworn. Being examined in chief by Judge John N. Baldwin, he testified as follows:

Q. Please state your full name?
A. George D. Follmer.
Q. Where do you live?
A. Nuckolls County.
Q. Nebraska?
A. Yes sir.
Q. What is your business and occupation?
A. Farming, raising stock and real estate.
Q. How long have you been in that business, Mr. Follmer?
A. Been in the real estate business about 30 years, or 31.
Q. Did you ever hold any state office in Nebraska?
A. Yes sir.
Q. What was it?
A. Commissioner of Public Lands and Buildings.
Q. How long.
A. January 1901 to January 1905.
Q. As Commissioner of Public Lands and Buildings you were a member of the State Board of Assessment and Equalization?
A. Yes sir.
Q. In 1901, in 1902 and in 1903, that Board of Assessment and Equalization consisted of the Governor and the State Treaurer and State Auditor?
A. Yes sir; I believe so.
Q. You were not a member of the Board then?
A. No sir.

1566 Q. You became a member of the Board in 1904 by virtue of the new enactment which is called the new revenue law?
A. Yest sir.

Q. So in 1904 was your first experience in discharging the duty of a member of the State Board of Equalization and Assessment?
A. Yes sir.
Q. As you re-call, the members of the Board in 1904 were the

Governor, Mr. Mickey, State Treasurer, Mr. Mortensen, the State Auditor, Mr. Weston and yourself. Is that all of them?

A. With the Secretary of State.

Q. And the Secretary of State, Mr. Marsh?

A. Yes sir.

Q. Do you remember how you ascertained the value of the tangible property of the Union Pacific railroad?

A. Now, shall I start in the beginning of the *modus operandi* that we used?

Q. Yes; answer the question.

A. We had the report of the Union Pacific, giving its total number of miles in the System, the total number of miles in the state, the rolling stock, right of way, bridges and the physical property of the road. I think there was a resolution by Mr. Weston that we first consider the value of the physical and tangible property of the road. We considered the evidence and the report with reference to such property, and then we considered the value of the road on the stock and bond and net earning test. That was the beginning of it, or start, as I recollect it.

Q. Mr. Mortensen did the figuring for you in ascertaining the value of the road on the stock and bond test, didn't he?

A. Yes sir.

1567 Q. Mr. Mortensen testified that he made these figures from the 6th Annual Report of the Union Pacific—That is the report showing the condition of the company for the year ending June 30th, 1903—Were you there when he made these deductions and figures?

A. Well, yes, that is—he had Poor's Manual and Clews' Reports with reference to that, and all those things there, and he was figuring from them.

Q. Yes; he testified that he had Poor's Manual, the reports of Henry Clews, in addition to the report of this Company.

A. Yes.

Q. He also testified that so far as the statement is concerned of values and amounts, they agreed, Poor's Manual and Clews' reports with the 6th Annual Report of the Union Pacific.

A. Well, I don't recollect about that much.

Q. He did the figuring—that is a fact that he did that?

A. Yes sir; he did that part of it.

Q. I understand that was left with him to do?

A. Yes sir.

Q. And he had these reports and books before you, of course?

A. Yes sir.

Q. And he made these figures and these deductions?

A. Yes sir.

Q. And you relied on his work, that part of the work?

A. Well, from what he said in refernce to it.

Q. Well, of course, you did that, as a matter of fact. You knew the sources of information, of course, to which he testified, and which we didn't dispute, that he had this 6th Annual Report and Clews'

Reports and Poor's Manual, but he made these figures for you
1568 and these deductions?

A. As I recollect, he said what deductions ought to be made, yes.

Q. But, I say, he figured up these tables, figured out the amounts for you?

A. Yes sir.

Q. And the rest of the Board relied on him to do that part of the work?

The ATTORNEY GENERAL: That is objected to as assuming that the witness knows what the other members of the Board relied on.

Q. Well, you did.

A. Well, I took it for granted that he was correct in that, and as far as the other members of the Board are concerned, I don't know.

Q. You don't know what the mental processes were, but you do know whether or not they made up statements from these amounts?

A. He brought these before the Board and told about them.

Q. But you didn't make any statement from the 6th Annual Report?

A. No sir; that is, I didn't figure.

Q. He made out the tables and the figuring and the deductions, whatever was made from it, was made by Mr. Mortensen? Isn't that a fact?

The ATTORNEY GENERAL: Objected to as leading.

A. That is a fact, yes sir.

Q. State what the fact may be, that in arriving at your valuation of the property of the Union Pacific Railroad for the purposes of assessment in 1904, you took into consideration or account,
1569 all the value of other property—property other than that of railroads in the state?

A. No sir; we did not.

Q. You paid no attention whatever to the value of the other property of the state?

A. No sir; that is outside of railroads, you mean?

Q. Yes sir; outside of railroads.

A. No sir.

Q. Or as to what it would be?

A. No sir; I did not.

Q. You made no investigation whatever for the purpose of determining the question of uniformity in the matter of the values of the other properties of the state?

A. As far as real estate, we did.

Q. Oh, you did.

A. Yes sir.

Q. Then you took into consideration the value of the real estate?

A. No; I say that other property of the state—that is, outside of railroads—we took into consideration.

Q. That is what I ask you.

A. Not in arriving at the value of the railroad we didn't, but we

had data concerning real estate and other property when we came to that, but we didn't take it into consideration when we assesed the railroad property.

Q. You paid no attention, as I understand it, whatever, to the question of the values of all other property in the state, other than that of railroads, in making up your valuations of the value of railroads for the purpose of determining the question of uni-
1570 formity in the matter of valuation and assessment.

A. If I understand you right, in making up our opinion, you want to know whether we took other property into consideration?

Q. In determining the question of uniformity, yes sir.

A. No sir.

Q. You didn't know, nor you didn't care, whether the real estate in this state was assessed or valued at ten millions or one hundred and forty millions, did you?

A. Well, we wanted—as far as that was concerned, we expected it would be assessed at its actual value.

Q. You relied on that, of course?

A. Yes sir.

Q. You would not have made this assessment, nor could not have made it unless you believed that the other property in the state would be assessed properly, as you had pretended to assess the railroads?

The ATTORNEY GENERAL: The defendants object to that as incompetent, irrelevant and immaterial, and as being unfair to the witness.

A. Yes, I think as far as my judgment is concerned, it would have been the same, Mr. Baldwin.

Q. That is to say, as far as you are concerned, you estimated the railroad upon the fact that the other property of the state would be assessed at its actual value,—full actual value, when you were trying to assess the railroads?

A. Well, in determining the value of the railroads, I didn't—as far as I was individually concerned, I didn't take into con-
1571 sideration what other property was worth; I took into consideration, as far as my judgment was concerned, what the railroad property was worth.

Q. So that you didn't care, nor didn't consider whether real estate would be assessed at ten million or a hundred and fifty millions, did you?

The ATTORNEY GENERAL: The defendants object to that as improper method of examination of the witness.

A. Well, I suppose, as far as that is concerned, maybe that is correct.

Q. Well, is it or not. You are under oath.

A. That had nothing to do with my determining the value of the railroads.

Q. It was strongly insisted to you all the time, for the purpose of asking you to make a fair assessment of the railroads that the other

property in the state would not be assessed or valued—would not be valued at its full value, wasn't it?

The ATTORNEY GENERAL: The defendants object to that as incompetent, irrelevant and immaterial and improper examination.

A. Well now; that might be correct; I don't have any knowledge of that, Judge.

Q. Well, now, Mr. Follmer, I want to know whether you want to say under oath, if it wasn't said to you repeatedly in person, by those who addressed you in the interest and behalf of the railroads, that other properties, with the railroads included would not amount to the sum of four hundred million dollars, as was contemplated;

1572 wasn't that before you and constantly talked to you, personally to you, and to the members of the Board, to the Board, by the representatives of the railroads?

A. Well, as far as that is concerned, I don't know as it was, as to being before the board. I know that was represented to me personally.

Q. Well, do you mean to swear here that you don't know, nor can't recollect, or that it made no impression on you, as to what the value of the grand assessment roll, or the amount of the grand assessment roll of all other properties of the state would be, when you were there nearly 60 days considering the question of the value of the railroads?

A. Well, Judge I don't recollect it.

Q. You don't?

A. No sir.

Q. Didn't General Manderson address you?

A. Yes sir; he did.

Q. Didn't he talk to you about that?

A. Maybe he did; I can't say that it was not the case, Judge.

Q. You can't recollect such an important matter?

A. It may be that he did, and I suppose he did, as far as that is concerned, but I say I don't have any recollection of it just at this time.

Q. Does now the fact that your attention is called to it, and the suggestion made, have any tendency to refresh your recollection on that subject.

The ATTORNEY GENERAL: We object to that as being improper.

A. I think that is a fact.

1573 Q. But notwithstanding these suggestions and these protests to you and the insistence of the railroads, that if you were going to find the value of the railroads at the actual value, and that other property would not be, that you should consider that question in determining the question of uniformity, you ignored it?

A. No sir; I think not.

Q. Then you did consider it—which position did you take on it?

A. Why, we must have considered it, yes sir.

Q. Then you did consider the question of uniformity in making the valuation of the railroads?

A. Yes sir.

Q. Mr. Follmer, do you have any recollection about these papers here marked Exhibit- 74 and 75?

A. Is this the report of the railroad, Judge?

Q. No; that is a statement, Mr. Follmer, that was made up by the Board, under and in pursuance of the Weston resolution, which was that you consider the tangible property.

A. Those are the final figures, are they, that the assessment was made on?

Q. Yes sir.

A. If those were the final figures——

Q. Your recollection about that is indefinite, is it?

A. Well, as far as the amounts is concerned, I can't recollect that, but I know there was final figures made.

Q. In accordance with the resolution?

A. Yes sir.

Q. You remember that?

A. Yes sir.

1574 Q. That is what I wanted to show, that in accordance with that resolution those figures were made up?

A. Yes sir.

Q. I ask you if you recall Exhibit 74, being the tabulation as agreed upon by the Board?

A. That is the final tabulation?

Q. Yes.

A. Well, if this is it——

Q. Well, I want to know what your recollection is about it.

A. I know there was figures made, Judge.

Q. But you cannot recall whether or not that is the paper?

A. No sir; I can't say that.

Q. Well, I wanted to know whether you did or not, but all you can say is, that was done?

A. There was final figures made, but whether those are the ones or not (indicating Exhibit 74), I can't say.

Q. And also Exhibit 75, do you remember anything about that?

A. No sir; I do not, Judge.

Q. Well, that is said to be a statement——

A. Of deductions that Mr. Mortensen made.

Q. It is, yes sir. You have not sufficient recollection to swear positively whether that is it or not?

A. No sir; I have not.

Q. Mr. Follmer, you recall what statement Governor Mickey made to you or to the Board, or in your presence at any of the meetings as to the fact that he had estimated that the grand assessment roll would be about four hundred million, when you were considering the question of the valuation of railroads.

1575 The ATTORNEY GENERAL: That is objected to as incompetent, irrelevant and immaterial.

A. He made that assertion during some time of the meetings, I don't remember just when it was.

Q. I don't care particularly about the time, but you remember that he made that assertion?

A. He made that assertion, I think, when some of the railroad men were before us.

Q. Would it refresh your recollection to say that when General Manderson was there, arguing before the Board that he made that assertion?

A. I can't say, Judge, when that was.

Q. Just simply that you do recollect it?

A. Yes, sir; I do.

Q. You cannot fix the time when he made that assertion?

A. No, sir; I cannot.

Q. Mr. Follmer, I understand you to say that you have been in the real estate business 25 years, in this state, and that in your official position you had investigated the character of lands generally throughout this state and their values?

A. As far as the investigation was concerned, Judge, that was as far as school lands were concerned, and then I got out and took the sale of lands for the years 1902 and '03, the different counties of the state, for the Board of Equalization up to January 1st, 1904.

Q. Then you didn't make any for 1904?

A. No, sir, I didn't, no sir. I took very nearly—there was some counties I couldn't get in. Take Douglas County here, I think that
was furnished to me, I came up here and I couldn't get hold
1576 of the books, and Reed, the assessor, furnished me those figures, and Mr. Clancy, I think, furnished me two or three counties, and he also had others that I had taken, and I found them accurate, and so I took his figures, I think, maybe, in two or three counties that I didn't visit personally.

Q. Are you talking about some statement that you gave to the Board?

A. Yes, sir.

Q. Was that a statement of all sales?

A. Of all sales as far as warranty deeds were concerned; I didn't take sheriff's sales, or anything of that kind. As I recall it, my statement would show very nearly a million of acres.

Q. Sales made in 1902 and 1903?

A. Yes, sir; up to the first of January, 1904.

Q. Where did you take these from?

A. I took them from the records of the counties.

Q. You did it yourself?

A. Yes, sir; I did it myself.

Q. All of them?

A. Not exactly all of them. I think my deputy took one or two counties for me, and as I say, Mr. Clancy, I think, furnished me one or two.

Q. Did you go to the record of every conveyance?

A. Yes, sir; I went to every county, that is, nearly every county; some of the western counties I did not.

Q. But, I mean, where you did go to the county?

A. Yes, sir; I went to the records and got them.

Q. You took each warranty deed?
1577 A. Yes, sir.
Q. Made a careful examination of each warranty deed?
A. Yes, sir.
Q. You eliminated sheriff's deeds, of course?
A. Yes, sir.
Q. And judicial sales, of course?
A. Yes, sir.
Q. And quit claim deeds, of course?
A. Yes, sir.
Q. And conveyances between members of families which indicated that it was not a money consideration?
A. Yes, sir.
Q. Well, I was asking you about your experience. I did not intend to allude to that, but that is all right as testing your competency to pass upon the valuation of lands generally in the state.
A. As far as my own county is concerned, and as far as generally all of the state, I wouldn't consider that I was able to state what the valuations were.
Q. Not able to state what the valuations were for any years?
A. No, sir.
Q. Do you remember a conversation that you had with Judge Kelly and Governor Mickey, during the time of the consideration of the assessment of railroads?
A. I recall a meeting of Governor Mickey and Judge Kelly and myself, yes, sir.
Q. Do you remember in that conversation that Governor Mickey asserted that the grand assessment roll would be four hundred million, and that if it didn't, so far as the Board was concerned, it would make it?
1578 A. No, sir; I don't have any recollection. I recollect of the meeting, but I don't recall anything of a conversation of that kind, Judge.
Q. You do not?
A. No, sir.
Q. Have no recollection of it?
A. No, sir.
Q. You recall the meeting?
A. Yes, sir.
Q. And that they discussed the question?
A. I don't know how it happened that the Governor and me were here—what was going on, but I know the Governor met me, and said that Judge Kelly requested to see us and to come along over, and that is the way I happened to get here.
Q. You would not swear that that conversation did not take place?
A. No, sir, I would swear that that didn't take place. If Judge Kelley said it was so, I wouldn't dispute it.

Cross-examination.

By Attorney General BROWN:

Q. Mr. Follmer, you and the Board spent a good deal of time assessing the railroads that year, didn't you?

A. My recollection is that we were in session from about the first Monday in May until about the third Monday in July, along there somewhere—that is my recollection of it.

Q. It was a new proposition to you to determine the value of railroads?

A. Yes, sir.

Q. When the Weston resolution was passed, the Board took up, did it, and considered the returns of the company on the value of their physical property in the State?

1579 A. Yes, sir.

Q. That was itemized by Mr. Scribner, and a value put on the items by him, wasn't it?

A. I think those were all matters of record before us.

Q. Was it your understanding at that time that you were simply considering the value of this physical property to be used as one of the factors in finally fixing the value of the railroad property?

A. Yes, sir.

Q. The conclusion as to what the physical property was worth was not a conclusion as to what the railroad of the state was worth?

A. No, sir.

Q. For assessment?

A. No, sir.

Q. Do you remember about how much time you spent on that?

A. No, sir; I do not; I will tell you; we had the real appraisement of the school land, and I was very busy——

Q. After you got through considering the physical values in the state and the returns of the company with reference to that, the Board then took up the consideration of the value of the railroad in the state, as tested by the stock and bonds?

A. Yes, sir; that is one of the tests.

Q. That was discussed very frequently and very much, wasn't it, between members of the Board?

A. Yes, sir; it was discussed; yes, sir.

Q. Mr. Mortensen was the leader in that investigation, was he?

A. Yes, sir.

1580 Q. You did not make any figures yourself, no estimate or computation yourself as to the value of it, by that test?

A. As far as the figuring was concerned, that was generally referred to the Secretary and he done the figuring and reported the results.

Q. I am asking you if you yourself made any figures or calculations on paper while you were considering the stock and bond test?

A. No sir.

Q. Other members of the Board did, did they not?

A. Yes sir; I think Mr. Weston did.

Q. And Mr. Mickey—didn't they all have figures and estimates on that test?

A. Well, I don't know whether they figured. They asked the Secretary to figure.

Q. Well, they had different estimates, didn't they?

A. Oh, yes, different estimates, different opinions.

Q. And being different, they must have been made by different members of the board?

A. Yes sir.

Q. Then Mr. Mortensen was not the only man who did any figuring on the stock and bond test, was he?

A. No sir; I think not.

Q. Do you remember approximately what value the Board concluded the road would have according to that test?

A. That is, the stock and bond test?

Q. The stock and bond test—about how many thousand dollars per mile, if you remember?

A. Well, I wouldn't swear gentlemen, positive to that,
1581 but it seems to me about ninety thousand dollars; now I wouldn't be positive about that.

Q. Then after considering the stock and bond value of the road, the Board took up the value as measured by the earning test, didn't it?

A. Yes sir.

Q. That was discussed?

A. Yes sir.

Q. And the returns of the company were used in connection with that discussion?

A. Would have to be used.

Q. You had no information as to the net earnings or gross earnings of the road, except what they had furnished you, did you?

A. That is all.

Q. Now, according to the net earning test, isn't it a fact that the value of the road—the net earnings in this state—capitalized at 6 per cent. amounted to something over ninety thousand dollars, didn't it?

A. I wouldn't swear positively in reference to that, but it seems to me that it was ninety-two thousand, but I wouldn't swear positively about that.

Q. But now the Board rejected, or failed to adopt, any one of those tests, when it finally came to fixing the valuation of the railroads for assessment, did it?

A. Yes sir.

Q. Were all those different questions and values measured by the stock and bond test, the net earning test, and the physical property test considered by the Board in arriving at its final judgment?

A. Yes sir.

1582 Q. They were all considered by you?

A. Yes sir.

Q. Were you influenced in finally assessing the property at

$52,000,000.00 in this state, in round numbers, by the statement of Governor Mickey that he thought the grand assessment roll would reach four hundred million dollars?

A. No sir.

Q. From your association with the board in its deliberations, what would you say as to whether or not the Board were influenced at all by that estimate of the grand assessment roll when they finally fixed the value of complainant's property for assessment?

A. Well, I could only say so far as I, myself was concerned, that I was not influenced.

Q. Do you think any of the others were?

A. I do not think so; I think they were all honest in arriving at their conclusion.

Q. Don't you know that every member of the Board made an unusual effort to find the actual value of the complainant's property in this state?

A. Yes sir; they did.

Q. And that was done because you understood the law to make it your duty to find that value?

A. Yes sir.

Q. Now, in reaching that value, were you influenced at all by reason of any estimate with respect to what other property would be assessed at?

A. No sir; I was not.

Q. Were you influenced at all in your judgment by the
1583 public press and the agitation and clamor at that time on the part of certain newspapers for a high railroad assessment?

A. No sir; I was not?

Q. Was any member of the Board, so far as you know?

A. Not as far as I know.

Q. Now, this conversation that you spoke of, between you and Judge Kelly and the Governor was had where?

A. I think it was in the first story of the Millard Hotel?

Q. But you don't remember whether or not the Governor made the statement to Mr. Kelly in substance that the grand assessment roll would be four hundred million dollars, and that was the reason they were assessing the railroads at the figures they were?

A. No sir; I do not recollect that conversation.

Q. You were with them and talking with them all the time at that conversation?

A. Yes sir; I was there; the Governor and the Judge was doing the talking.

Q. And you were listening?

A. I was listening.

Q. Now, then, after you had assessed the railroad, Mr. Follmer, then the Board convened as a Board of Equalization, didn't it, July 18th of that year?

A. Yes sir; I think it did.

Q. Were complaints made before the Board at that time charging under-valuation and under-assessment of property other than railroads throughout the state?

A. Under-valuation?

Q. Yes; wasn't it claimed by people, and by the complain-
1584 ant in this case that lands and other property in the counties, other than railroads, had been under-assessed?

A. I don't recollect; I recollect that they claimed they was over-assessed.

Q. That the railroads were over-assessed?

A. Yes sir.

Q. Complaints were made with respect to the value, the assessed value of other property than railroads at that time?

A. Yes sir.

Q. Did the Board take evidence on that question?

A. Yes sir; they took evidence.

Q. And were arguments made on that question?

A. Yes sir.

Q. Can you state—do you remember in a general way what the conclusion of the Board was on the matter, that is, did they raise or increase the assessment of property other than railroads?

A. If I recollect right, they increased the value of 24 counties out of the 90; that is my recollection; twenty-three or twenty-four, I wouldn't be positive about that.

Q. Why was the increase made?

A. On account that the Board did not consider that they were assessed at their full value.

Q. And after the increase was made, was it the judgment of the Board that that represented approximately the full value of the property assessed in those counties?

A. Yes sir.

Q. How about the counties that were not increased?

A. Well, the judgment was that they were assessed at their full value.

1585 Q. Did the Board reduce the assessment in any of the counties?

A. There was no—in my recollection there was no county reduced. I- fact, I know that to be the case.

Q. And it was for the purpose of assisting the Board and yourself in reaching a conclusion on the assessment of other properties than railroads that you went out and made this examination?

A. Yes sir.

Q. Of lands in the several counties?

A. Yes sir.

Q. Did you make a written report to the Board?

A. Yes sir.

Q. Do you think you would be able to recognize the paper that was presented by you?

A. I think I would; I think I would know my signature.

Q. Is Exhibit 92 the statement of values of lands, as shown by the stated considerations in transfers that you reported to the Board?

A. Well, this is not the paper that I submitted to the Board; this is a copy of it.

Q. Is that a copy of it?

A. This certainly is a copy; this is not the original I know that.

Q. The writing in ink on the exhibit on the right hand lower corner of the paper, that was not on the report at all?

A. No sir.

Q. You know nothing about that?

A. No sir.

Q. Nor the correctness of these figures?

A. No sir; I don't know anything about it (indicating the
1586 red ink writing referred to).

Q. The crosses on this exhibit, opposite certain counties like Boone, Box Butte, Boyd and the figures five and ten per cent. in different counties, what do they indicate?

A. Well, that indicates that that was the raise in those different counties; I see here one is marked 2%; I didn't think they had raised any county two per cent.

Q. You didn't recall that?

A. No sir; I didn't recall any less than five per cent., but still, there may have been; I don't recall anything of that kind.

Q. But the value of lands as shown by the stated consideration is in the last column, is it not?

A. Yes sir.

Q. And that represents one fifth of the consideration that is stated, isn't that true?

A. Yes sir.

Q. These counties that are indicated by a cross and with a per cent. show that they were raised such a per cent. above this consideration that is stated in the last column, is that true?

A. I think that is correct.

The ATTORNEY GENERAL: The respondents now offer in evidence Exhibit 92, as a part of the cross examination of this witness.

Judge BALDWIN: I have no objection, although, I may want to cross examine upon it.

Exhibit 92 is as follows (see next page).

1587 EXHIBIT No. 92.

No.	Counties.	Lands.	
		Ass'd.	Sold.
1	Adams	6.05	6.08
2	Antelope	3.05	3.39
3	Banner	.40	.49
4	Blaine	.83	.....
5	Boone, + 5%	5.26	7.03
6	Boxbutte, + 10%	.39	.54
7	Boyd + 5%	3.09	3.89
8	Brown	1.27	1.30
9	Buffalo	3.69	3.05
10	Burt, 5%	9.48	10.27
11	Butler	9.30	8.52
12	Cass	12.07	11.65

No.	Counties.	Land. Ass'd.	Land. Sold.
13	Cedar	6.04	6.77
14	Chase	.46	.64
15	Cherry	.72	1.27
16	Cheyenne, 10%	.47	1.02
17	Clay	6.95	7.00
18	Colfax	9.98	
19	Cuming	10.93	11.04
20	Custer	1.42	1.40
21	Dakota, 10%	6.97	8.59
22	Dawes	.60	.53
23	Dawson	2.50	2.49
24	Deuel, 10%	.36	.92
25	Dixon	7.07	7.37
26	Dodge	10.55	11.52
1588			
27	Douglas	12.86	12.21
28	Dundy	.62	.81
29	Fillmore	7.71	8.04
30	Franklin	3.62	3.37
31	Frontier	1.03	1.25
32	Furnas	2.43	1.86
33	Gage, 5%	8.64	9.44
34	Garfield	1.59	1.53
35	Gosper	2.17	1.83
36	Grant	1.32	1.47
37	Greeley	2.95	2.74
38	Hall	6.02	5.40
39	Hamilton	8.48	8.65
40	Harlan	3.02	2.35
41	Hayes	.56	.59
42	Hitchcock	.98	.88
43	Holt	1.12	1.62
44	Hooker	.61	.....
45	Howard + 5%	2.94	3.57
46	Jefferson	6.36	6.88
47	Johnson + 5%	8.62	9.95
48	Kearney, + 2%	4.59	4.79
49	Keith, + 10%	.41	.92
50	Keyapaha	No. acres not given	
51	Kimball + 10%	.35	.81
52	Knox 5% R	3.76	3.96
53	Lancaster	8.38	8.68
1589			
54	Lincoln, 10	.66	1.02
55	Logan	.90	
56	Loup	1.02	

No.	Counties.	Land. Ass'd.	Land. Sold.
57	Madison	7.10	6.86
58	McPherson	.67	1.29
59	Merrick	5.46	5.62
60	Nance	6.08	5.44
61	Nemaha + 5	10.42	11.91
62	Nuckolls	5.04	5.24
63	Otoe	11.98	10.58
64	Pawnee + 5	8.27	9.61
65	Perkins + 10	.40	
66	Phelps	3.95	4.29
67	Pierce + 5%	4.99	5.65
68	Platte	8.48	9.48
69	Polk	8.95	8.51
70	Redwillow	1.41	1.25
71	Richardson + 10	9.41	11.60
72	Rock + 5	.98	1.79
73	Saline	8.09	8.17
74	Sarpy	11.81	11.08
75	Saunders	10.73	10.54
76	Scotts Bluff	1.42	2.10
77	Seward	8.99	8.33
78	Sheridan	.63	
79	Sherman + 10	1.98	2.40
80	Sioux	.60	.47
1590			
81	Stanton, + 5	6.38	7.12
82	Thayer	6.22	6.44
83	Thomas	.53	.83
84	Thurston	9.16	10.58
85	Valley	2.87	2.71
86	Washington	10.52	10.85
87	Wayne	9.02	8.88
88	Webster	4.26	4.28
89	Wheeler	1.06	1.29
90	York, + 5	8.62	8.72

Final Assessment.

G. F'd.	Uni.	School.
4½	1	½

Total average value, 410.99 by assessors.
" " " 423.28 " deed consideration.
Assessment 97.3 + per cent. of consideration in deeds.

1591 Q. Was the same method used in assessing the Union Pacific railroad company as was used with other railroad companies in the state?

A. Yes sir.

Q. The same tests were applied to all the companies?

A. Yes sir.

Q. What would you say, Mr. Follmer, was the relative value of the Union Pacific railroad company in this state compared with the other companies?

Judge BALDWIN: I object to that as not proper cross examination.

The ATTORNEY GENERAL: I think that objection is good, but I don't think you ought to insist upon it at this time.

Judge BALDWIN: Well, I won't insist upon it; I withdraw it.

A. Well, I think there was fully the difference between them that we made.

Q. It is worth more per mile in your judgment than any other railroad company doing business in the state?

A. Yes sir.

Redirect examination.

By Judge BALDWIN:

Q. This statement, Mr. Follmer, which is Exhibit 87: Now, I understand you, with the exception of two counties, you made that up——

A. No; there was some of these western counties that I didn't get, Judge, but I think Mr. Clancy furnished me three—he furnished me more, but I had taken some and the counties that I had
1592 taken, the same ones that he had given me, they compared with but very little difference.

Q. How long were you engaged in this work?

A. Well, now, as soon as the law was passed, and I found that I was a member of that Board I went to work; I wanted to know something about it. When it come to lands that was the only way that I could get any knowledge, and still I do not claim in taking that that it was absolutely correct. It was only simply a guide, Judge.

Q. I understand that, but how long were you engaged in that work?

A. Well, I must have been engaged six months myself, and deputy, and then I think there is one or two counties that the county clerks furnished me with.

Q. Well, but what you did, now I am talking about what you did.

A. I done the majority of the work.

Q. You would go to the county yourself, would you?

A. Yes sir.

Q. You would go to the records?

A. Yes sir.

Q. You would look at the full record of each conveyance?

A. I would go to the county there and if I could get the county

clerk's abstract or daily report I would take it from that, and some counties I took it from the general index, and some counties I would have to take it from the numerical index. They had different systems and some was much easier than others.

Q. You took it from abstracts, from numerical indexes and from the general indexes?

1593 A. Yes sir, and the daily report, if I could get daily reports, or an abstract that would be much quicker than the other way.

Q. You did not go and examine the record of each deed and read it over?

A. No sir; I didn't do that; only for instance I would run it down to see whether it was a warranty deed.

Q. But you didn't examine each conveyance?

A. No sir; I did not.

Q. But you took it as you have indicated?

A. Yes sir.

Q. And you adopted this as a guide?

A. Yes sir.

Q. As one of the things which you thought ought to be considered; one of the items of evidence to be considered by you about values?

A. Yes sir.

Q. And you tried, in order to get under this system a fair idea of it, you eliminated as far as you could find from the sources of information such as you have indicated here, the abstracts, the numerical indexes and so forth, you eliminated conveyances which were abnormal, if I can use that word, that is to say, quit claim deeds, judicial sales and deeds the consideration of which were love and affection, and such things as that; you eliminated those?

A. I did.

Q. And having eliminated all of those, you thought by taking this record of warranty deeds that it was a fair guide, as you have said, in determining the values of the real estate in the different counties?

1594 A. Yes sir.

Q. So you submitted that to the Board?

A. Yes sir.

Q. Believing that to be a good system?

A. Yes sir.

Q. Mr. Weston has testified, Mr. Follmer, that the Board finally adopted the stock and bond test in fixing the value of the railroads; now, what is your recollection upon that subject?

The ATTORNEY GENERAL: The respondents object to the question as being based on an incorrect statement of the evidence, as irrelevant and incompetent.

Q. Isn't it a fact, Mr. Follmer, absolutely, that you finally took those figures—as you got from the records of the Union Pacific on the stock and bond test, as a final criterion to value the Union Pacific?

A. No sir; if we had done that Judge, it would have been a much higher assessment.

Q. That doesn't matter whether you made your proper deductions, but you adopted that as the final test, and then made deductions?

A. We simply took all the evidence known to us, and made the proper deductions and based our assessment on that. We did not take the stock and bonds as the final test, or anything of that kind.

Q. What is your test that you spoke of as the test of the capitalization of earnings—what is that?

A. You mean as I understand it, Judge?

Q. Yes sir.

1595 A. The capitalization of the earnings, on the net earnings, would be to capitalize the earnings at a reasonable rate of interest and if that interest showed six per cent. on a certain sum, that would be the value of the road on the net earning test.

Q. Where is your table on that? Show me that test here, and when and where and how you came out.

A. You mean a table of that kind that I made?

Q. Yes sir; and where you have figured it; state where you figured it out at any time.

A. As I say, those figures were made by the Secretary.

Q. By the Secretary?

A. Yes sir.

Q. You swear that that was figured by the Secretary?

A. Yes sir.

Q. Did you ever see a statement figured out by the Secretary, a tabulated statement, showing what the Union Pacific railroad was worth according to the capitalization of its earnings?

The ATTORNEY GENERAL: We object to that as immaterial.

A. As he figured it there and then reported it, Judge?

Q. He figured it and reported it?

A. Yes sir.

Q. Did you ever see a tabulated statement by anybody—the Secretary or anybody else, and if you did, give me the amount of it, wherein you found the value of the Union Pacific railroad?

A. Just as I say, that the Secretary——

Q. Will you swear that the Secretary ever gave you, or that you ever saw a tabulated statement of the value of the Union Pacific according to the capitalization of the earnings?

1596 A. Only as he gave it to me.

Q. You saw it?

A. No sir; I didn't see it.

Q. Did you have it in your hands?

A. No sir.

Q. Did any member of the Board have it in his hands?

A. No sir.

Q. It seems that upon cross examination you can tell even the amount, but now I am asking you for your recollection on that proposition, and you don't seem to recollect any time that you had in your hands a tabulated statement showing the value of the Union Pacific at any time according to the capitalization of the earnings.

A. What I was going to say simply was that we had a statement of the net earnings.

Q. Oh, certainly you did. How much did you find the value of the Union Pacific to be per mile, according to the capitalization of the earnings per mile? You said that according to the stock and bond test it was ninety thousand dollars per mile—now, how much was it according to the capitalization of earnings?

A. My recollection is ninety-two thousand dollars.

Q. On the stock and bond test, you mean?

A. Ninety thousand dollars on the stock and bond test—or ninety-two thousand—or it might have been sixty-five thousand, I wouldn't say positively about that, Judge.

Q. What earnings did you take into consideration in capitalizing it?

A. Well, whatever the railroad reported.

1597 Q. You did not have any other information on that subject?

A. No sir.

Q. So then, if you did find the value in that way, you took what the company reported?

A. What say?

Q. You took what the company reported, did you, and capitalized it?

A. Yes sir.

Q. Do you know that the company made no reports on its earnings in the state of Nebraska?—Examine this report, here it is and point out where the Union Pacific reported its earnings in the State of Nebraska.

The ATTORNEY GENERAL: The respondents object to that as being improper and highly unfair to the witness.

A. If this is a certified copy and it is not in there, why there wasn't any.

Q. But from your recollection now on cross examination you have been testifying to what the values were, according to your recollection.

A. How we arrived at them—you asked me how we would get at that, and get a test on the net earning, and I gave you my idea how we would get at them.

Q. I know you did, but now I want to know whether you did that or any member of the Board at all, in arriving at the value of the Union Pacific, and if so, when and where, and who prepared the statement, and what was the statement, what was the amount?

A. If there was anything of that kind done, Judge, it was done by the Secretary.

1598 Q. Isn't it a fact, Mr. Follmer, that no report, no statement of any kind was before that Board as the local earnings of the Union Pacific in the State of Nebraska; the only report being the earnings of the road, which included the inter-state business?

A. I guess that is right; I want to be fair.

Q. I know you do, but you know you seem to recollect pretty well when the attorney general is cross-examining you, but I knew when I refreshed your recollection you would see that error, and recognize

the fact that the only report we ever made was that the earnings per mile were $5566.82, and those items are applicable to the entire lines and other property of the company, the earnings here shown include all earnings on both local and interstate traffic, and gross earnings on both freight and passenger traffic are about sixteen and one half per cent. of the total gross earnings on all such traffic in, through and over the state. The net earnings shown are found by deducting the expenses of operation and taxes from gross receipts; they cannot be taken to represent the actual net profits from the business. And isn't that all of the evidence of any kind or character that the Board had before it for determining the net earnings of the Union Pacific in the state of Nebraska.

The ATTORNEY GENERAL: The respondent objects to this as being unfair to the witness, because the Exhibit following is a different and supplementary report of earnings.

A. Yes sir; I think that is so.

Q. Now, of course, I will have to ask you some questions
1599 where I may have misunderstood you in the cross examination, but if I understood you correctly, you said in answer to the attorney general that you did not consider at all the values of other properties in the state, other than that of railroads, when you were finding the values of the railroads, is that correct?

A. That is correct.

Q. So then, as a matter of fact, you did not care, did not know, nor did not ascertain whether or not lands in the state would be worth ten millions or a hundred and fifty millions?

A. That in my judgment did not come into the assessment of railroads at all.

Q. You did not consider it at all?

A. No sir.

Q. Nor did not care?

A. Did not consider it.

Q. Nor did not care, I say? I am asking you whether you cared?

A. I don't think it made any difference whether it was ten millions or a hundred and fifty millions.

Q. You did not consider it, or take it into consideration in any manner whatever?

A. No sir.

Recross-examination.

By Attorney General BROWN:

Q. You do not pretend to be able to state from recollection all the information the road gave the board with respect to its earnings, do you, Mr. Follmer?

A. I do not think there is that man living that could.

Q. I am asking with reference to you?

A. No sir; I do not.

1600–1958 Q. You remember that Exhibit 68–G was before the Board, do you not, after examining it?

A. Well, yes sir; that was before the Board.

Q. And Exhibit 68–H?
A. Yes sir.
Q. You remember that exhibit also?
A. Why yes; if that is a part of the record, sure it was before the Board.
Q. And that purports to be a statement of the earnings made by the company of the operating expenses and taxes of the main line, the Kearney Branch and other branches in the state of Nebraska for the year 1903?
A. I suppose that is what it is.
Q. And that shows an average net earning of $5566.82, does it not?
A. Well, I suppose that is what that indicates.
Q. Now that, capitalized at 6 per cent., or at any per cent. is what you mean by the net earnings test, is it not?

Judge BALDWIN: We object to that as being an unintentional misstatement upon the part of the Attorney, incompetent, and grossly General as to the exhibit.

A. Well, that would show the value of the road by the net earning test.
Q. That is all I am trying to get at, is your plan or theory of the net earning test.
A. Yes sir; that's it.

Witness excused.

1959 General CHARLES F. MANDERSON, a witness on the part of the complainant, being called and duly sworn, testified as follows:

Direct examination.

By Judge JOHN N. BALDWIN:

Q. Your name is Charles F. Manderson?
A. Correct.
Q. And you are General Solicitor of what is called the Burlington & Missouri Railroad west of the river?
A. Yes sir.
Q. General, you know Governor J. H. Mickey?
A. I do.
Q. General, did you make an argument before the State Board of Assessment and Equalization of the State of Nebraska, in 1904, when the Board was considering the assessment and valuation of the railroads in this state?
A. I did in April or May, 1904, when the Board was in session as a Board of Equalization.
Q. General, do you recall at the time, or at any time in your discussion when you were referring to the valuation of property generally, of an interruption in your argument at that time?
A. Yes; I remember of such an occurrence.
Q. And do you recall a conversation that you had with Governor

Mickey at that time, with reference to the assessed valuation of all property in the state?

A. I do.

Q. General was that an open session of the Board?

A. It was.

1960 Q. And they were all present?

A. Yes sir.

Q. Will you detail that colloquy or conversation as near as you can?

The ATTORNEY GENERAL: We object to that as immaterial, irrelevant and incompetent, and in no way tending to support the issues of the case.

A. Governor Mickey interrupted me in the course of my argument by the statement that property other than railroad property in the State of Nebraska, would undoubtedly be increased by the assessment to be made during the summer, under the law, from seventy to eighty per cent. I am not positive that he said at that time that the increase would be from one hundred and eighty-eight millions, which was the assessment of the property outside of railroad property in 1903, to probably four hundred million, but my impression is that he also said that, but I am quite sure of his statement that other property than railroad property would unquestionably be increased from seventy to eighty per cent. In response to that suggestion of the Governor, I said about this: "I am not a prophet or the son of a prophet, but I venture to predict that it will probably be not half that sum, and even including property that may be devoleped under the new law, that has heretofore escaped taxation, it will not probably exceed thirty-five per cent." There may have been a little more colloquy and during the course of that talk, either at once, or immediately thereafter, I said: "Suppose you are wrong in your supposition and you increase the railroad property seventy or eighty per cent. and then find that other property is not increased

1961 in any such proportion, how are you going to remedy the wrong against the railroad company; will you raise the assessment of other property?" At that there was some little talk among the members of the Board, in which those present participated as to whether or not the right would exist in the Board to raise the assessment of other property so as to equalize it. The opinions were various, but it resulted in a pretty general expression, and I think I, myself, used an expression akin to this: that even if such right existed, the Board would not dare raise other property so as to make it equal to that amount to which they had raised the railroad property.

Judge BALDWIN: That is all.

The ATTORNEY GENERAL: The respondents move to strike out all the testimony of this witness as being irrelevant, incompetent and an attempt on the part of complainant to impeach its own witness.

Cross-examination waived.

Witness excused.

1962 JAMES E. KELBY, a witness on the part of the complainant is here called and duly sworn. Being examined in chief by Judge John N. Baldwin, he testified as follows:

Q. Your name is James E. Kelby?

A. Yes sir.

Q. And you are attorney for the Burlington railroad?

A. Yes sir.

Q. Mr. Kelby, were you present at the time General Manderson made his argument before the State Board of Equalization in May or June, 1904?

A. Yes sir; I was present during one of the days of the session of the Board of Equalization during the year 1904, at which General Manderson made an argument in behalf of his client, the Burlington railroad.

Q. Did you hear the colloquy between General Manderson and the members of the Board, particularly Governor Mickey, with reference to the valuation of property other than railroads?

A. I did.

Q. I wish you would state what you heard said at that time.

The ATTORNEY GENERAL: The respondents object to this as being immaterial, irrelevant and incompetent, and in no way tending to support the issues in the case.

A. At the close, or during the argument by General Manderson Governor Mickey said that it was absolutely essential that there should be an increase in the valuation of railroad property to comport with the increase in the general mass of property, the valuation of whose assessment for that year, would, in his judgment, based upon information that he had received from different parts
1963 of the state, aggregate the sum of four hundred millions of dollars, or thereabouts, and that the railroad property would have to measure up against that. Then it was suggested by the General that if the assessment of the general mass of property should not approximate that amount, and the railroad property should be assessed at an increased percentage over the previous year, whether there was power in the Board, under the law, to restore the parity between the two assessments. It was Governor Mickey's opinion that the Board possessed the power under the law. It was the opinion expressed by Mr. Weston that that power did not exist, and therefore, if the assessment of four hundred millions did not materialize, and the railroad assessments thus proposed to be enormously increased, should be made and fixed at that sum, that there was no power to correct the railroad assessment. Then General Manderson suggested that even if the power to change the general assessment did exist, that the Board would dare not do it for reasons which he need not suggest.

Judge BALDWIN: That is all.

The ATTORNEY GENERAL: The respondents now move to strike out all the testimony of this witness as being irrelevant, incompetent and an attempt on the part of complainant to impeach its own witness.

Cross-examination.

By Attorney General BROWN:

Q. Mr. Kelby, do you remember what month this meeting was held in?

A. Well, my best judgment is that it was during the month of May Mr. Brown.

Witness excused.

1964 R. D. POLLARD, a witness on the part of the complainant, being called and duly sworn, testified as follows:

Direct examination.

By JOHN N. BALDWIN:

Q. Your name is R. D. Pollard?

A. Yes, sir.

Q. You are Tax Commissioner of the Burlington railroad?

A. Tax Agent, they call it.

Q. You know Governor Mickey?

A. Yes, sir.

Q. Did you have a conversation with him at any time during the time the state board of assessment and equalization was in session, considering the valuation of railroad properties in Nebraska in 1904?

A. Yes, sir.

Q. Did you have any conversation with Governor Mickey with reference to what the grand assessment roll would be of all properties?

A. Yes, sir.

Q. For that year?

A. Yes, sir.

Q. I wish you would state what he said?

The ATTORNEY GENERAL: The respondents object to that as irrelevant, immaterial and incompetent and not tending to prove in any way any of the issues in this case.

1965–1968 A. I think it was on the day that the Board asked me to come down to Lincoln and testify as to the value of the stocks and bonds on our System, but I can't be quite sure about that, because I was there so often. However, I remember that it was at the noon hour, and all the other members of the Board were out of the room, and the Governor asked me—he said something like this: He said: "Now, Mr. Pollard, if real estate"—no, "If property generally is increased from seventy to eighty per cent., don't you think that the railroads should be increased in the same proportion?" "Well," I said, "I don't think so, because I think we have been assessed all out of proportion to other property in the past." "Well," he says, "if real estate is increased 70 or 80 per cent., don't you think the railroads should be increased in the same proportion?" "Well," I said, "if we are to be compared with anything, I should think real

estate would be the fairest comparison, but I think it would be very unfair to increase us 70 or 80 per cent. as against personal property that has escaped taxation so much in the past." He at that time made the statement to me positively that in his judgment, he had no doubt, in fact, that the total assessed valuation of the state would be four hundred million dollars for the year 1904.

Judge BALDWIN: That is all.

The ATTORNEY GENERAL: The respondents move to strike out all the testimony of this witness for the reason that it is incompetent, irrelevant and immaterial, and an attempt on the part of the complainant to impeach its own witness.

Cross-examination waived.

Witness excused.

1969–1981 DECEMBER 28TH, 1905.

All parties met pursuant to adjournment, and further proceedings were as follows:

It is agreed by and between the parties to this case that the only railroad companies in the state resisting the assessment for the year 1904 are the complainant in this case and the Chicago, Burlington & Quincy Railway Company.

It is further agreed that the only other railroads in this state are as follows and that their mileage is as follows:

Name of railroad.	Main track, miles.	Side track, miles.
Chicago & Northwestern	1066.37	161.92
Chicago, St. Paul, Minn. & Omaha	271.16	56.74
Chicago R. I. & P.	124.27	29.62
C. R. I. & P. St. Joe Branch	69.78	12.40
C. R. I. & P. Nelson Branch	51.53	4.49
Missouri Pacific, Main Line	102.09	32.08
Missouri Pacific, Weeping Water Br.	71.58	13.25
Missouri Pacific-Lincoln Branch	45.39	9.90
Missouri Pacific-Crete Branch	58.18	4.35
Missouri Pacific, Spring & P. Brs.	7.88	.....
Kansas City & Northwestern	20.10	1.45
Pacific Railway in Nebraska	71.22	3.45
St. Joe & Grand Island	112.30	12.62
Wilmar & Sioux Falls Br. Gt. Nor.	128.21	8.46
Omaha Bridge & Terminal Co.	3.12	10.26
Mason City & Ft. Dodge	5.46	.....

1982 Thereupon afterwards, to-wit: On the 13th day of January, 1906, the Memorandum opinion of Judge Munger was filed in said case, which said memorandum opinion is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

No. 80, W.

THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,

vs.

F. C. BABCOCK, Treasurer of Adams County, *et al.*, Respondents.

Memorandum Opinion.

MUNGER, *D. J.*:

This is a case brought to enjoin a portion of the taxes levied against complainant's property in various counties of the state. Right to the relief asked is based upon the fact that the tax sought to be enjoined is invalid for the reason that the State Board of Equalization and Assessment, at its meeting in 1904, made an illegal assessment upon complainant's road, for the following reasons:

First. That prior to such meeting, politicians, political parties and party press, by discussion and party resolutions, vociferiously asserted that the railroads of the state were tax shirkers and did not *bear* or pay their just proportion of taxes, and demanded that the members of the State Board of Equalization and Assessment increase the assessment of railroad properties; that by reason thereof the members of said Board were coerced, and through fear and a desire for
1983 future political success, permitted their reason to be overthrown, and, without exercising their own individual judgment, arbitra-ily made the assessment and valuation complained of.

Second. That the said Board of Equalization and Assessment, in fixing and determining the value of complainant's property, considered and valued its franchise derived from the Congress of the United States.

Third. That said Board, in fixing the valuation of complainant's property for assessment within the state, took into consideration earnings of complainant's property upon business interstate in character, which had neither origin nor destination within the State of Nebraska.

Fourth. That said Board, in valuing complainant's property for assessment, valued the same upwards of twenty per cent. higher than the relative value of all other property subject to assessment within the state.

Fifth. That the value of complainant's property, as found by the said Board, for assessment purposes, is in excess of its real and true value.

Sixth. That said Board of Equalization and Assessment, in determining the value of complainant's property, ascertained the value of the stocks and bonds upon the whole system of complainant's road, divided the same by the total number of miles, fixing the amount of complainant's property in Nebraska at the amount thus ascertained of the total value per mile of the system, multiplied by

the number of miles of road within the State of Nebraska, without deducting therefrom valuable terminal rights in other states as well as other property not used by complainant as a part of its system of road, but which property entered into and was considered
1984 in ascertaining the value of such stocks and bonds; that by this method the said Board imported within the state and assessed against complainant's property without the state and over which the State Board had no jurisdiction.

It is alleged in the bill that in these several respects the members of said State Board of Equalization and Assessment acted unlawfully and fraudulently.

Upon the argument three propositions, only, were discussed.

First. That the proceeding of the State Board contravened the federal constitution, as it imported property out of the state within the state under pretence of applying the unit rule in fixing the valuation.

Second. That the State Board proceeded arbitrarily and not according to the provisions of the statute.

Third. That the undervaluation of all other property, when compared relatively with that of railroad property, shows a deliberate intent upon the part of the Board to impose an unfair burden on complainant's property.

The first ground stated in the bill, that the members of the State Board were influenced by public clamor and did not exercise their own individual judgment, is not supported by the evidence. While the evidence shows that there was considerable public discussion through the press and in public gatherings to the effect that the is that the members of the Board performed their duty impartially that their assessment ought to be increased, the presumption of law is that the members of the Board performed their duty impartially and according to the requirements of the statute. The mem-
1985 bers have each testified in the case that they were not influenced by any such considerations in reaching their conclusions as to the value of complainant's property; that the only effect, if any, that such discussion had upon their action, was to cause them to give a more thorough investigation of facts from which to ascertain the real value of complainant's road in Nebraska. It is sought to overcome this by showing a large increase in the valuation for assessment in the year 1904 over the valuation made by the Board of the same property in 1903. It is to be borne in mind, however, that the assessment for 1904 was made under a new revenue law, very different from that under which the valuation was made in 1903, and under the new act the valuation of property other than the railroads was also largely increased, though not the same percentage as railroad property.

The fact that the said Board of Equalization and Assessment, in fixing and determining the value of complainant's property, considered its franchise derived from the Congress of the United States does not invalidate the assessment. Western Union Tel. Co. *v.* Mass., 125 U. S. 530; Western Union Tel. Co. *v.* Taggart, 163 U. S., 1.

The fact that the Board, in fixing the valuation of complainant's property for assessment within the state, took into consideration earnings of complainant's property upon business interstate in character, which had neither origin nor destination within the State of Nebraska, was not an improper exercise of its powers. It was their duty to ascertain the value of complainant's property within the state as an operating railroad. One of the factors proper to be considered in determining such value was complainant's earnings, whether such earnings were derived from local or interstate business. A
1986 railroad as an operating concern is manifestly of greater value than the mere tangible property constituting the road, unoperated. Suppose, for instance, a railroad company's line of road should cross one corner of the state, having no depot or station within the state, and that all of its traffic, so far as the state was concerned, was interstate in character, would it be said that in such a case, because the few miles of road within the state did no local business that in determining the value of such mileage, its business and earnings could not be considered as a factor? The earnings of a railroad are an important feature in determining its value, irrespective of whether such earnings are upon interstate business or otherwise. If the value of a railroad, for the purposes of taxation, which extends through several states was to be determined by its earnings upon business arising and terminating in each state, its real and actual value would be greatly reduced, and, probably, a large per cent. of its value thus escape taxation.

That the Board, in valuing complainant's property for assessment, valued the same upwards of twenty per cent. higher than the relative value of all other property subject to assessment within the state, is unavailing unless such excessive valuation was intentional, the rule of law being that "the judgment of a State Board empowered to fix a valuation for taxation cannot be set aside by the testimony of witnesses that the valuation was other than that fixed by the Board, where there is no fraud or no gross error in the system on which the valuations were made." Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co. *v.* Backus, 154 U. S. 421; Western Union Tel. Co. *v.* Taggart, 163 U. S., 1; Adams Express Co. *v.* Ohio, 165 U. S. 194, 229; Coulter *v.* Louisville & Nashville R. Co., 196 U. S. 599-609.
1987 The evidence in this case does not show such fraud. True it is, evidence has been introduced to show that sales of real estate were made in various counties at a price higher than the average assessed value of all real estate in such counties.

As said by the Court, in Coulter *v.* Louisville & Nashville R. Co.: "It is obvious that the accidental sales in a given year may be a misleading guide to average values."

Nor can the judgment of the Assessing Board be overthrown by the opinions of two or three persons in each of the several counties in the state, that property other than railroads was assessed not to exceed seventy-five to eighty per cent. of its real or actual value. The value of property generally is a matter of individual judgment; and, in this case, the testimony of the various witnesses is conflicting, some testifying that real and personal property other than railroads was

assessed at a figure much below its real value; other- testifying that such assessments were the full value of the property.

As to the final assertion, that the Board, in fixing the valuation of complainant's property for assessment, determined such valuation by taking the total value of the stocks and bonds upon the entire system of complainant's road and divided the same by the total number of miles, and thus determined the value of complainant's property in the State of Nebraska, without deducting from the value of such stocks and bonds property of complainant located in other states, not necessarily used in the actual business of the company, and which necessarily assisted in fixing the value of such stocks and bonds, thereby importing into the state for assessment property over which the state had no jurisdiction, if it were true that the State Board, in valuing complainant's property, based such valu-
1988 ation only upon the stock and bond basis, without making deductions of property permanently located in other states not necessarily used in the actual business of the company, such assessment would be void under the decision of the Supreme Court in Fargo *v.* Hart, 193 U. S. 490.

While it is true that under the evidence it appears that the Board, in determining the valuation of complainant's property, did consider as one factor the value of the stocks and bonds without making such deductions, it is also true that they considered as additional factors the value of the tangible property and the value based upon the earnings of the road within the state. In other words, it clearly appears that the valuation was not determined solely upon the basis of the value of the stocks and bonds. It was the duty of the Board to ascertain the value of complainant's road not by any one process, but by inquiring into all of the elements which are naturally and usually considered in the commercial world in determining values. This was properly done by the Board. The mere fact that they may have considered some evidence which was improper without making the deduction enumerated does not render their action void. A mistake in judgment on the part of assessing officers does not warrant the interference of a court by injunction. It appears from the evidence that after using various methods to determine the value of complainant's property, the individual members of the Board did not reach the same conclusion as to such value the final result being reached by each member yielding, somewhat, his individual judgment. To that extent it may be, and probably, was, an element of arbitrary judgment in the end; but this is but a natural, and I think, necessary, result of a board consisting of several members in reaching a united conclusion as to values, and is not improper.

1989 The general features of this case, I think, are ruled against complainant in the case of Coulter *v.* Louisville & Nashville R. Co., *supra.*

Finding and judgment will be for respondents, and the bill dismissed for want of equity.

Endorsed: Filed Jan. 13, 1903. Geo. H. Thummel, Clerk.

1990 Thereupon afterwards, to-wit: At the November 1905 Term of said Court and on the 25th day of January, 1906 the following decree was signed and filed in said case, and duly entered of record in Journal of proceedings of said Court, to-wit:

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska; Charles W. Brennan, as Treasurer of Box Butte County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. Wheeler, as Treasurer of Cass County, Nebraska; A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; E. J. Dempster, as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; E. P. Pyle, as Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage County, Nebraska; C. T. Weeks, as Treasurer of Greeley County, Nebraska; J. B. Cunningham, as Treasurer of Hamilton County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William T. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt, as Treasurer of Kearney County, Nebraska; Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelley, as Treasurer of Otoe County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; B. G. Gossard, as Treasurer of Redwillow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; J. A. Brown, as Treasurer of Harlan County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scotts Bluff County, Nebraska; L. F. Schulz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N.
1991 Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as Treasurer of Thomas County, Nebraska; G. R. McCrary, as Treasurer of Webster County, Nebraska; R. Henderson, as Treasurer of York County, Nebraska, Defendants.

Decree Dismissing Bill.

This cause came on to be heard at this term upon the bill, the answer of defendants, the replication of complainant, and the proofs

in the case, was argued by counsel; and thereupon, upon consideration thereof, the court finds on the issues joined in favor of defendants and against the complainant. It is therefore

Ordered adjudged and decreed as follows, viz: that the temporary injunction heretofore entered in *this cause be, and the same* is, hereby dissolved, and that complainant's prayer for a permanent injunction be, and the same is, hereby denied. It is further

Ordered, adjudged and decreed that complainant's bill be, and the same is hereby dismissed. It is further

Ordered, adjudged and decreed that the defendants recover of complainant their costs, to be taxed by the clerk.

Thereupon complainant, the Chicago, Burlington & Quincy Railway Company, excepted to the above decree and to each and every part thereof, and prayed an appeal therefrom to the supreme court of the United States, which is hereby allowed.

Dated this 25th day of January, 1905.

By the Court,

W. H. MUNGER, *Judge.*

1992 Thereupon afterwards, to-wit: On the 25th day of January 1906 an Assignment of Errors was filed in said case, which said Assignment is in the words and figures following, to-wit:

United States Circuit Court, District of Nebraska.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska; CHARLES W. Brennan, as Treasurer of Boxbutte County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. wheeler, as Treasurer of Cass County, Nebraska; A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; E. J. Dempster, as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; E. P. Pyle, as Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage County, Nebraska; C. T. Weekes, as Treasurer of Greeley County, Nebraska; J. B. Cunningham, as Treasurer of Hamilton County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William T. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt, as Treasurer of Kearney County Nebraska; Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelley, as Treasurer of Otoe County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; B. G. Gossard, as Treasurer of Redwillow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; J. A. Brown, as Treasurer of Harlan County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N. Sweet-
1993 land, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as Treasurer of Thomas County, Nebraska; C. R. McCrary, as Treasurer of Webster County, Nebraska; R. Henderson, as Treasurer of York County, Nebraska, Defendants and Appellees.

Assignment of Error.

Doc. W, No. 80.

Now on this 25th day of January, A. D. 1903, came the appellant by its solicitor, Charles J. Greene, and says that the decree en-

tered in the above cause on the 25th day of January, A. D. 1906, is erroneous and unjust to appellant for the reasons

First: Because the decree erroneously dissolved the temporary injunction herein, denied the appellant's prayer for a permanent injunction, and dismissed its suit.

Second: Because it sustains the unlawful action of the State Board of Equalization and Assessment of the state of Nebraska in arbitrarily valuing and assessing appellant's property in controversy, in violation of the provisions of the statute of the state defining its jurisdiction, powers and duties, and of the fourteenth amendment to the Constitution of the United States.

Third: Because the statute of the State defining the jurisdiction, powers and duties of the State Board of Equalization and Assessment, as construed and applied by that Board and sustained by the court, conflicts with the provisions of the fourteenth amendment to the Constitution of the United States in this: that owing to the circumstances and condition of appellant's railroad and properties in the several states in which its railroad lines are located and the use of the method prescribed in the statute aforesaid, the action of
1994 the Board operated to and did increase the valuation and assessment of the appellant's railroad and properties in the state of Nebraska subject to the jurisdiction of the Board by adding thereto the enormous valuation of appellant's railroad and properties in other states and imposing thereon a tax in the state of Nebraska.

Fourth: Because the State Board of Equalization and Assessment, during its session in May, 1904, and before the final hearing as to the valuation and assessment of appellant's railroad and property in the state, subject to its jurisdiction, arbitrarily agreed and determined to increase the valuation and assessment for taxes for the year aforesaid of all railroad properties in the state, and particularly those of the appellant, upon the understanding between them that the valuation and assessment of all taxable properties in the state would be increased by 80% over the valuations and assessments of previous years, which had been equal and uniform among the owners thereof, and pursuant to this agreement and understanding, the said Board did increase the valuation and assessment of all such railroad properties, and particularly the railroad properties of the appellant, by 80%, while the valuation and assessment of all other taxable properties in the state were increased only 50%, thereby grossly discriminating against the railroad properties in favor of the other properties aforesaid.

Fifth: Because the decree upholds and sustains the unlawful and arbitrary action of the State Board of Equalization and Assessment complained of in valuing and assessing the railroad and other properties of appellant in said state for the year 1904 without giving consideration to the sworn statements, schedules and other information and testimony presented to the Board, as required by the
1995 statute defining its jurisdiction, powers and duties, and without adopting or using any statutory or other recognized rule or method for valuing and assessing railroad properties and made

necessary by the nature and situation of the appellant's property and the evidence presented to the Board.

Sixth: Should it, however, be found that in valuing and assessing appellant's property the State Board gave consideration to the statements, schedules and testimony presented to it, as required by law, then the action of the Board, in valuing appellant's railroad and property at $38,745 per mile and assessing the same upon that basis was abritrary, unlawful and unjust in this: that in making such valuation and assessment the Board found the aggregate value of appellant's entire property located in the several states, the property outside the state of Nebraska being of an enormously greater value than the property in such state, by finding the total value of the appellant's stocks and bonds and assuming the same to be the aggregate value of appellant's entire property aforesaid and dividing it by the total number of miles of the appellant's main track located in the several states and so finding the average value per mile thereof and basing its valuation and assessment upon the average valuation so as aforesaid found, thereby including in its valuation and assessment of appellant's railroad in Nebraska not only the greater values of appellant's lines outside of the state on account of the extensive and valuable terminal grounds and facilities connected with them, but also on account of the appellant's vast and valuable properties not connected with said lines, situated and locally assessed in other states.

Seventh: Because of the arbitrary and unlawful action of
1996 the State Board of Equalization and Assessment in failing and refusing to certify to each of the clerks of the counties of the state of Nebraska in which any part of appellant's railroad is located the average valuation found and declared by it, but, on the contrary, returning and certifying to each of the said clerks the average valuations per mile arbitrarily ascertained and adopted by them in disregard of the requirements of the statutes defining its jurisdiction, powers and duties in this respect.

Wherefore appellant prays that said decree herein may be reversed, and that the appellant may have an adjudication and decree in its favor, as prayed in its bill of complaint and as herein specified.

CHAS. J. GREENE,
Solicitor for Appellant.

Endorsed: Filed Jan. 25, 1906. Geo. H. Thummel, Clerk.

1997 Thereupon afterwards, to-wit: On the 25th day of January, 1906, a petition for appeal to the United States Supreme Court was filed in said case, which said Petition is in the words and figures following, to-wit:

United States Circuit Court, District of Nebraska.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,

vs.

F. C. BABCOCK, as Treasurer of Adams County, Nebraska; CHARLES W. Brennan, as Treasurer of Boxbutte County, Nebraska; J. C. Perry, as Treasurer of Butler County, Nebraska; William D. Wheeler, as Treasurer of Cass County, Nebraska; A. K. Greenlee, as Treasurer of Cheyenne County, Nebraska; F. T. Swanson, as Treasurer of Clay County, Nebraska; W. A. George, as Treasurer of Custer County, Nebraska; W. T. Wilson, as Treasurer of Dawes County, Nebraska; C. C. Barr, as Treasurer of Dundy County, Nebraska; E. J. Dempster, as Treasurer of Fillmore County, Nebraska; C. C. Brown, as Treasurer of Franklin County, Nebraska; E. P. Pyle, as Treasurer of Frontier County, Nebraska; B. F. Moore, as Treasurer of Furnas County, Nebraska; W. W. Wright, as Treasurer of Gage County, Nebraska; C. T. Weekes, as Treasurer of Greeley County, Nebraska; J. B. Cunningham, as Treasurer of Hamilton County, Nebraska; J. P. Wertz, as Treasurer of Hitchcock County, Nebraska; F. S. Albright, as Treasurer of Hooker County, Nebraska; C. E. Taylor, as Treasurer of Howard County, Nebraska; S. R. Merrell, as Treasurer of Jefferson County, Nebraska; William T. Wheatley, as Treasurer of Johnson County, Nebraska; Rollin Orcutt, as Treasurer of Kearney County Nebraska; Benjamin F. Knight, as Treasurer of Lancaster County, Nebraska; E. S. Davis, as Treasurer of Lincoln County, Nebraska; D. J. A. Dirks, as Treasurer of Nemaha County, Nebraska; C. C. Dudley, as Treasurer of Nuckolls County, Nebraska; R. W. Kelley, as Treasurer of Otoe County, Nebraska; O. H. Loch, as Treasurer of Pawnee County, Nebraska; C. L. Granlund, as Treasurer of Phelps County, Nebraska; E. H. Sexson, as Treasurer of Perkins County, Nebraska; B. G. Gossard, as Treasurer of Redwillow County, Nebraska; Martin Zook, as Treasurer of Richardson County, Nebraska; C. E. Bowlby, as Treasurer of Saline County, Nebraska; J. A. Brown, as Treasurer of Harlan County, Nebraska; Oscar Hanson, as Treasurer of Saunders County, Nebraska; Thomas Preston, as Treasurer of Scotts Bluff County, Nebraska; L. F. Schultz, as Treasurer of Seward County, Nebraska; Lee Fritz, as Treasurer of Sheridan County, Nebraska; S. N. Sweetland, as Treasurer of Sherman County, Nebraska; J. A. Bothwell, as Treasurer of Thayer County, Nebraska; Chris Fritz, as Treasurer of Thomas County, Nebraska; C. R. McCrary, as Treasurer of Webster County, Nebraska; R. Henderson, as Treasurer of York County, Nebraska, Defendants and Appellees.

1998

Petition for Appeal to the United States Supreme Court.

Doc. W, No. 80.

The above named appellant, conceiving itself aggrieved by the decree made and entered on the 25th day of January, 1906, in the

above entitled cause, does hereby appeal from said order and decree to the supreme court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed; that this court fix the amount of the bond which shall supersede the decree herein, and that an order be entered herein that during the pendency of such appeal the temporary injunction be restored and continued in force. And that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the supreme court of the United States.

Dated this 25th day of January, A. D. 1906.

CHAS. J. GREENE,
Solicitor for Appellant.

It is ordered that the appeal prayed for be, and the same is, hereby allowed; supersedeas bond is fixed at two hundred and fifty thousand dollars ($250,000.), and same, when given and approved, shall restore and continue during the pendency of said appeal the temporary injunction heretofore allowed herein.

W. H. MUNGER, *Judge,*
United States district Judge for the District of Nebraska.

Endorsed: Filed Jan. 25, 1906. Geo. H. Thummel, Clerk.

1999 Thereupon afterwards, to-wit: On the 25th day of January, 1906, a Bond on Appeal to the United States Supreme Court was filed in said case, which said Bond is in the words and figures following, to-wit:

Know all men by these presents: That we, Chicago, Burlington & Quincy Railway Company, as principal, and G. W. Holdrege and Henry W. Yates as sureties, are held and firmly bound unto F. C. Babcock, as treasurer of Adams county, Nebraska; Charles W. Brennan, as treasurer of Boxbutte county, Nebraska; J. C. Perry, as treasurer of Butler county, Nebraska; William D. Wheeler, as treasurer of Cass county, Nebraska; A. K. Greenlee, as treasurer of Cheyenne county, Nebraska; F. T. Swanson, as treasure of Clay county, Nebraska; W. A. George, as treasurer of Custer county, Nebraska; W. T. Wilson, as treasurer of Dawes county, Nebraska; C. C. Barr, as treasurer of Dundy county, Nebraska; E. J. Dempster, as treasurer of Fillmore county, Nebraska; C. C. Brown, as treasurer of Franklin county, Nebraska; E. P. Pyle, as treasurer of Frontier county, Nebraska; B. F. Moore, as treasurer of Furnas county, Nebraska; W. W. Wright, as treasure of Gage county, Nebraska; C. T. Weekes, as treasurer of Greeley county, Nebraska; J. B. Cunningham, as treasurer of Hamilton county, Nebraska; J. P. Wertz, as treasurer of Hitchcock county, Nebraska; F. S. Albright, as treasurer of Hooker county, Nebraska; C. E. Taylor, as treasurer of Howard county, Nebraska; S. R. Merrell, as treasurer of Jefferson county, Nebraska; William T. Wheatley, as treasurer of Johnson county, Nebraska; Rollin Orcutt, as treasurer of Kearney county,

Nebraska; Benjamin F. Knight, as treasurer of Lancaster county, Nebraska; E. S. Davis, as treasurer of Lincoln county, Nebraska; D. J. A. Dirks, as treasurer of Nemaha county, Nebraska; C. C. Dudley, as treasurer of Nuckolls county, Nebraska; R. W.
2000 Kelley as treasurer of Otoe county, Nebraska; O. H. Loch, as treasurer of Pawnee county, Nebraska; C. L. Granlund, as treasurer of Phelps county, Nebraska; E. H. Sexson as treasurer of Perkins county, Nebraska; B. G. Gossard, as treasurer of Red Willow county, Nebraska; Martin Zook, as Treasurer of Richardson county, Nebraska. C. E. Bowlby, as treasurer of Saline county, Nebraska; J. A. Brown, as treasurer of Harlan county, Nebraska; Oscar Hanson, as treasurer of Saunders county, Nebraska; Thomas Preston, as treasurer of Scott Bluff county, Nebraska; L. F. Schultz as treasurer of Seward county, Nebraska; Lee Fritz, as treasurer of Sheridan county, Nebraska; S. N. Sweetland, as treasurer of Sherman county, Nebraska; J. A. Bothwell, as treasurer of Thayer county, Nebraska; Chris Fritz, as treasurer of Thomas county, Nebraska; G. R. McCrary, as treasurer of Webster county, Nebraska and R. Henderson, as treasurer of York county Nebraska, in the full and just sum of two hundred and fifty thousand dollars ($250,000.) to be paid to the said obligees and certain attorneys, successors, executors, administrators and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 25th day of January, in the year of our Lord one thousand nine hundred and six.

Whereas lately at the November term A. D. 1905, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Chicago, Burlington & Quincy Railway Company, plaintiff, and F. C. Babcock, as treasurer of Adams county, Nebraska; Charles W. Brennan, as treasurer of Box Butte county, Nebraska; J. C. Perry, as treasurer of Butler county, Nebraska; William D. Wheeler, as treasurer of Cass county, Nebraska; A. K. Greenlee, as treasurer of Cheyenne county, Nebraska; F. T. Swanson, as treasurer of Clay county,
2001 Nebraska; W. A. George as treasurer of Custer county, Nebraska; W. T. Wilson, as treasurer of Dawes county, Nebraska; C. C. Barr, as treasurer of Dundy county, Nebraska; E. J. Dempster, as treasurer of Fillmore county, Nebraska; C. C. Brown, as treasurer of Franklin county, Nebraska; E. P. Pyle, as treasurer of Frontier county, Nebraska; B. F. Moore, as treasurer of Furnas county, Nebraska; W. W. Wright, as treasurer of Gage county, Nebraska; C. T. Weeks, as treasurer of Greeley county, Nebraska; J. B. Cunningham, as treasurer of Hamilton county, Nebraska; J. P. Wertz, as treasurer of Hitchcock county, Nebraska; F. S. Albright, as treasurer of Hooker county, Nebraska; C. E. Taylor, as treasurer of Howard county, Nebraska; S. R. Merrell, as treasurer of Jefferson county, Nebraska; William T. Wheatley, as treasurer of Johnson county, Nebraska; Rollin Orcutt, as treasurer of Kearney county, Nebraska; Benjamin F. Knight, as treasurer of Lancaster county, Nebraska, E. S. Davis, as treasurer

of Lincoln county, Nebraska; D. J. A. Dirks, as treasurer of Nemaha county, Nebraska; C. C. Dudley as treasurer of Nuckolls county, Nebraska; R. W. Kelley, as treasurer of Otoe county, Nebraska; O. H. Loch, as treasurer of Pawnee county, Nebraska; C. L. Granlund, as treasurer of Phelps county, Nebraska; E. H. Sexson, as treasurer of Perkins county, Nebraska; B. G. Gossard, as treasurer of Red Willow county, Nebraska; Martin Zook, as treasurer of Richardson county, Nebraska; C. E. Bowlby, as treasurer of Saline county, Nebraska; J. A. Brown, as treasurer of Harlan county, Nebraska; Oscar Hanson, as treasurer of Saunders county, Nebraska; Thomas Preston, as treasurer of Scotts Bluff county, Nebraska; L. F. Schultz, as treasurer of Seward county, Nebraska; Lee Fritz, as treasurer of Sheridan county, Nebraska; S. N. Sweetland, as treasurer of Sherman county, Nebraska; J. A. Bothwell, as treasurer of Thayer county, Nebraska; Chris Fritz, as treasurer of Thomas county, Nebraska; G. R. McCrary, as treasurer of Webster County; Nebraska; and R. Henderson, as Treasurer of York county, Nebraska, defendants, a decree was rendered against the said Chicago, Burlington and Quincy Railway Company, and the said Chicago, Burlington & Quincy Railway Company having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing them to be and appear in the supreme court of the United States at the City of Washington, thirty days from and after the date of said citation.

2002–2125

Now the condition of the above obligation is such that if the said Chicago, Burlington & Quincy Railway Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.,
By G. W. HOLDREGE, [SEAL.]
Gen'l Manager.
G. W. HOLDREGE. [SEAL.]
HENRY W. YATES. [SEAL.]

Sealed and delivered in presence of
CHARLES J. GREENE.

Approved by
W. H. MUNGER,
United States District Judge for the District of Nebraska.

Endorsed: Filed Jan. 25, 1906. Geo. H. Thummel, Clerk.

2126 *Citation.*

U. S. Supreme Court.

The United States of America to F. C. Babcock, as treasurer of Adams county, Nebraska; Charles W. Brennan, as treasurer of Box Butte county, Nebraska; J. C. Perry, as treasurer of Butler county, Nebraska; William D. Wheeler, as treasurer of Cass county, Nebraska; A. K. Greenlee, as treasurer of Cheyenne county, Nebraska; F. T. Swanson, as treasurer of Clay county, Nebraska; W. A. George, as treasurer of Custer county, Nebraska; W. T. Wilson, as treasurer of Dawes county, Nebraska; C. C. Barr, as treasurer of Dundy county, Nebraska; E. J. Dempster, as treasurer of Fillmore county, Nebraska; C. C. Brown, as treasurer of Franklin county, Nebraska; E. P. Pyle, as treasurer of Frontier county, Nebraska; B. F. Moore, as treasurer of Furnas county, Nebraska; W. W. Wright, as treasurer of Gage county, Nebraska; C. T. Weekes, as treasurer of Greeley county, Nebraska; J. B. Cunningham, as treasurer of Hamilton county, Nebraska; J. P. Wertz, as treasurer of Hitchcock county, Nebraska; F. S. Albright, as treasurer of Hooker county, Nebraska; C. E. Taylor, as treasurer of Howard county, Nebraska; S. R. Merrell, as treasurer of Jefferson county, Nebraska; William T. Wheatley, as treasurer of Johnson county, Nebraska; Rollin Orcutt, as treasurer of Kearney county, Nebraska; Benjamin F. Knight, as treasurer of Lancaster county, Nebraska; E. S. Davis, as treasurer of Lincoln county, Nebraska; D. J. A. Dirks, as treasurer of Nemaha county, Nebraska; C. C. Dudley, as treasurer of Nuckolls county, Nebraska; R. W. Kelley, as treasurer of Otoe county, Nebraska; O. H. Loch, as treasurer of Pawnee county, Nebraska; C. L. Granlund, as treasurer of Phelps County, Nebraska; E. H. Sexson, as treasurer of Perkins county, Nebraska; B. G. Gossard, as treasurer of Red Willow county, Nebraska; Martin Zook, as treasurer of Richardson county, Nebraska; C. E. Bowlby, as treasurer of Saline county, Nebraska; J. A. Brown, as treasurer of Harlan county, Nebraska; Oscar Hanson, as treasurer of Saunders county, Nebraska; Thomas Preston, as treasurer of Scotts Bluff county, Nebraska; L. F. Schultz, as treasurer of Seward county, Ne-
2126¼ braska; Lee Fritz, as treasurer of Sheridan county, Nebraska; S. N. Sweetland, as treasurer of Sherman county, Nebraska; J. A. Bothwell, as treasurer of Thayer county, Nebraska; Chris Fritz, as treasurer of Thomas county, Nebraska; G. R. McCrary, as treasurer of Webster county, Nebraska, and R. Henderson, as treasurer of York county, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the supreme court of the United States at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal duly allowed by the circuit court of the United States for the district of Nebraska, and filed in the clerk's office of said court on the 25th day of January, 1906, in a cause wherein Chicago, Burlington &

Quincy Railway Company is appellant and you are appellees, to show cause, if any, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Munger, judge of the circuit court of the United States for the district of Nebraska this 25th day of January in the year of our Lord one thousand nine hundred and six.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

Service of a copy of the within citation is hereby admitted this 27th day of Jan., A. D. 1906.

NORRIS BROWN,
Attorney for Appellees.

2126½ [Endorsed:] Doc. W. P. 80. United States Circuit Court, District of Nebraska. Chicago, Burlington & Quincy Railway Company, Appellant, *v.* F. C. Babcock, as Treasurer of Adams County, *et al.*, Defendants. Citation. Filed Feb. 8 1906 A D. Geo. H. Thummel, Clerk.

2127 Thereupon afterwards, to-wit:—At the November 1905 Term of said Court, and on the 14th day of February, 1906, an Order was signed and filed in said case, and duly entered in Journal No. "5" of said Court, the following of which is the original:

2128 United States Circuit Court, District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
F. C. BABCOCK, Treasurer of Adams County, Nebraska, *et al.*

It is Ordered that in compliance with Rule 9 of the Supreme Court, good cause being shown, that the time for filing the record in the above entitled cause in the Supreme Court of the United States be enlarged and extended to March 8th, 1906.

Dated at Omaha, Nebraska, this 14th day of February, 1906.

W. H. MUNGER, *Judge.*

[Endorsed:] Filed Feb. 14, 1906. Geo. H. Thummel, Clerk.

2128½ Thereupon, afterwards, to wit:—At the November 1905 Term of said Court, and on the 27th day of February, 1906, the following order was signed and filed in said case and duly entered of record in Journal No. "5" of said Court, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
F. C. BABCOCK, Treasurer, etc., *et al.*

It is Ordered that the original Blue Print of accounting Divisions of Chicago, Burlington and Quincy Railway Company, Lines West of the Missouri River, and the original Biennial Report of the Auditor of Public Acounts to the Governor of the State of Nebraska, December 1904, both used as evidence at the hearing of cause above entitled may be sent up to the United States Supreme Court as provided by Statute.

W. H. MUNGER, *Judge.*

Endorsed:—Filed Feb. 27, 1906, Geo. H. Thummel, Clerk.

2129 Thereupon afterwards, to-wit:—On the 22nd day of February 1906, Præcipe for Transcript was filed in said case, which said Præcipe for Transcript is in words and figures following, to-wit:—

United States Circuit Court, District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
F. C. BABCOCK, ET AL.

Præcipe for Transcript.

Please prepare Transcript for United States Supreme Court in the above entitled cause, and include therein the following papers and proceedings, to-wit:—

1. Bill of Complaint.
2. Writ of Injunction.
3. Demurrer.
4. Motion, to Amend Bill and Amendment.
5. Order of Jan. 30, 1905. Cause Cont'd. Leave given to amend.
6. Order of Feb. 11, 1905. Demurrer argued and submitted.
7. Memo. Opinion.
8. Order on Demurrer.
9. Answer.
10. Exceptions, to Answer.
11. Order, exceptions argued and submitted.
12. Opinion, and Order overruling Exceptions, etc.
13. Replication.

14. Motion to Dissolve Injunction as to State Taxes 1904.
15. Volumes 1, 2, 3, and 4 of Testimony.
16. Compl't's Exhibit No. 1, being 49th Annual Report of Board of Directors of C B & Q R R Co.
17. Respondents' Exhibits 25 to 113 inclusive, County Abstracts of Assessment.
18. Testimony taken in case of U. P. R. R. Co. *vs.* Robert O. Fink, *et al.* No. 79 "W," being Volumes 1, 2, 3 and 4.
19. Memorandum Opinion.
20. Decree Dismissing Bill.
21. Assignment of Errors.
22. Petition for Appeal, and Order Allowing same.
23. Bond on Appeal.
24. Exhibit- 161 to 258 inclusive, being affidavits as to values of land in various counties.
25. Citation.
26. Order extending time to file Transcript.
27. Præcipe for Transcript.
28. Certificates of Clerk.
28½. Copy of order of Court as to Certifying original Exhibits. Dated this 22nd day of February, 1906.

C. J. GREENE,
Solicitors for Complainant.

Endorsed:—Filed Feb. 22nd, 1906, Geo. H. Thummel, Clerk.

2130 United States Circuit Court, District of Nebraska.

No. 80, Docket "W."

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
F. C. BABCOCK, Treasurer of Adams County, *et al.*

UNITED STATES OF AMERICA, *District of Nebraska, ss:*

I, Geo. H. Thummel, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify that in compliance with the Præcipe, a copy of which is found on page 2129 hereof, the foregoing Record (consisting of four (4) Volumes marked Volume One (1) Volume Two (2), Volume Three (3) and Volume Four (4) has been made; that a certificate of the Clerk is attached to Volumes One (1) Two (2) and Three (3), and that said Record is a true and faithful transcript of the pleadings and proceedings of record and on file in said Court as mentioned in said Præcipe and as indicated in the foregoing Index, in the above entitled case, and that a copy of the Citation duly certified has been lodged and remains in my said office as such Clerk.

Witness my hand and the seal of said Court at Omaha in said District, this 22nd day of February, A. D. 1906.

[Seal United States Circuit Court, District of Nebraska.]

GEO. H. THUMMEL, *Clerk.*

Cost of Transcript $1215.60.

2131 In the Supreme Court of the United States.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a Corporation,
v.
F. C. BABCOCK, Treasurer of Adams County, Nebraska, *et al.*

Stipulation.

It is hereby agreed between the parties hereto that the following testimony and exhibits only shall be included in the printed record in the above case:

	Page of original record.
Bill of complaint	2
Exhibit "A," assessed valuations per mile of C. B. & Q. Ry. Co. property in Nebraska for the year 1904	87
Exhibit "B," counties, mileage and valuation certified to by State Board of E. & A. to county clerks	88
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Complainant's exhibit No. 11, side track returned for assessment to the state board of E. of Nebraska for the year 1904 379
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List of railroads in the state and their mileage 1969

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Memorandum opinion 1982
Decree dismissing bill 1990
Assignment of errors 1992
Petition for appeal 1997
Order allowing appeal 1998
Bond on appeal to U. S. Sup. Ct. 1999

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Citation 2126
Order extending time to file transcript in Sup. Ct. 2128
Praecipe for transcript 2129
Certificate of clerk 2130

The portion of the original record not herein specified shall not be included in the printed record.

CHARLES J. GREENE,
For Chicago, Burlington & Quincy Ry. Co.
NORRIS BROWN,
Att'y General, Solicitor for F. C. Babcock, et al., Appellees.

2136 [Endorsed:] File No. 20116. Supreme Court U. S. October Term, 1905. Term No. 614. Chicago, Burlington & Quincy Ry. Co., App't, *vs.* F. C. Babcock, Treas'r, &c., *et al.* Stipulation as to printing record. Filed April 24, 1906.

Endorsed on cover: File No. 20,116. Nebraska. C. C. U. S. Term No. 215. Chicago, Burlington & Quincy Railway Company, Appellant, *vs.* F. C. Babcock, as Treasurer of Adams County, Nebraska, *et al.* Filed March 5th, 1906. File No. 20,116.